

to Exhibit 4 in evidence?

A On the return, gross receipts in Schedule C is shown as \$30,917.17.

Q There is a difference between the \$30,971. and the \$37,000. shown as total income on this prescription blank, is there not, sir?

A Yes, there is.

Q What is that difference made of, sir?

A If I may refresh my memory by consulting my report and reading from it, I would appreciate it.

THE COURT: Of course.

A I say in my report: "Included with the expense work sheets submitted by Edelstein was a printed prescription slip of Wolf in which was noted total income \$37,401.05, total bank deposits, \$41,706.54, and a statement 'Bank deposits exceed income because bank deposits reflect sale of stocks and other money not related to business.'

"Apparently the total income of \$37,401.05 indicated by the taxpayer was comprised of gross receipts per Schedule C of the 1969 tax return, \$30,971.17; gross wages from Mt.Sinai, \$6,429.88; total income, \$37,401.05.

"The total bank deposits indicated by the taxpayer of \$41,706.54 can only be partially reconciled in the following manner: Total deposits in Chemical Bank checking account,

\$45,449.33, less Mt.Sinai Hospital salary deposited, \$5,320.78,
subtotal \$40,128.55, less bank credit memo, \$6.; total
business bank deposits \$40,122.55."

Q Did Mr. Edelstein have access to the fact that
there were salary checks issued to Dr. Wolf from Mt.Sinai
Hospital deposited?

MR. LAWYER: Objection.

MR. APPLEMAN: Your Honor, I will withdraw that
question.

THE COURT: All right.

Q Looking at Government Exhibit 14A, is there any
way of reconciling these figures as you did in your report
with the figures as shown on Government Exhibit 14A? In
other words, can you make the same reconciliation based on
the information in 14A?

A The same reconciliation?

Q The same reconciliation that you made here.

A No.

Q So, therefore, is there anything in Government
Exhibit 14A relative to the check deposits or income of
the Doctor besides this note that we have on the Doctor's
prescription?

A No.

Q Therefore, Mr. Edelstein would not know what these

figures represent?

MR. LAWYER: Objection.

THE COURT: Yes, he can't testify to what Edelstein could or could not know.

Q If you did not have the reconciliation in your report and were relying solely on Government Exhibit 14A could you reconcile the figures per the work sheets as Government Exhibit 14A and the return per Government Exhibit 4?

A Only from the information on the prescription slip, which is the exact figure shown in the return.

Q Could this prescription blank refer solely to Schedule C income?

A I would say yes, because the figures tie-in.

Q I am talking about Schedule C. Could these figures per the prescription blank have been the total Schedule C income that the Doctor had rather than a combination of the W-2 and Schedule C income?

MR. LAWYER: I object to the speculative nature of the question.

THE COURT: Yes, I will sustain the objection.

Q Now, Mr. Edelstein, according to your interview with him, related to you that he never obtained oral information pertaining to income of Dr. Wolf; is that correct,

2 sir?

3 A In one conversation he made that statement. That
4 is what I relate in my report.

5 Q Did the Doctor receive any payments from the Aetna
6 Life Insurance Company?

7 A He received payments from many different companies
8 and patients, companies on behalf of patients and many
9 others, but I don't remember, you know, any particular name.
10 I went thru many, many items.

11 Q Sir, I wish to show you my copy of Government
12 Exhibit 524 in Evidence. Is there listed thereon a payment
13 from Royal Globe Insurance Company?

14 A Yes.

15 Q I wish to show you my copy of Government Exhibit
16 526 in Evidence. Are there any payments listed here from
17 the City of New York?

18 A Yes, there is one payments listed here.

19 Q I wish to show you Government Exhibit 525 in Evi-
20 dence. Is there a payment thereon from a company known as
21 American Buff International Company?

22 A Yes, there is for \$30.

23 Q Sir, I wish to show you my copy of Government
24 Exhibit 533 in Evidence. Are there any payments listed
25 thereon from Aetna Life Insurance Company?

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A There is one payment listed here, \$15., in June of 1969.

Q Is there any payment listed on the same sheet from Prudential Insurance Company?

A Yes, there is one payment of \$5. listed from Prudential.

Q I wish to show you my copy of Government Exhibit 536 in Evidence. Are there any payments listed thereon from the Guardian Life Insurance Company?

A There is one payment listed from the Guardian of \$5. in October of 1969, October 8th.

Q Using the same exhibit, Government Exhibit 536 in Evidence, are there any payments listed therein from the Illinois Mutual Life & Casualty Company?

A Yes, there is one payment listed of \$5. on November 12, 1969.

Q Is there any payment listed from the Canada Life Insurance Company?

A Yes, a \$5. payment from the Canada Life Insurance Company, November 1969.

Q Referring to the same exhibit, sir, is there any payment made to the Doctor from Consolidated Edison?

A Yes, there is a payment from the Consolidated Edison Employees Mutual Aid Society, Inc. or \$5. on

2 November 14, 1969.

3 Q Is there any payment listed in the same exhibit
4 from the American Heart Association, Inc.?

5 A Yes, there is a payment of \$100. listed on
6 December 2, 1969.

7 Q I wish to show you my copy of Government Exhibit 535
8 in Evidence. Was there any payment made to Dr. Wolf from
9 Sperry & Hutchison Company?

10 A Yes, there is a payment of \$115. dated September
11 4, 1969.

12 Q Is there any payment on the same exhibit from the
13 Beneficial National Life Insurance Company made payable
14 to the Doctor?

15 A Yes, sir, two payments listed from that company,
16 one on the date of July 31, 1969 of \$5. and one on the date
17 of August 5, 1969, \$10. The dates I have been giving are
18 the dates of the check.

19 Q I hope we covered all the companies, but it would
20 appear that the Doctor had received some form of payment
21 from the following companies: Aetna Life Insurance Company,
22 Prudential Insurance Company, Guardian Life Insurance Company,
23 Royal Globe Insurance Company, Illinois Mutual Life &
24 Casualty Company, Canada Life Insurance Company, American
25 Heart Association, Inc., American Buff International,

1 mcds Skolnick - cross 710

2 Consolidated Edison, Sperry Hutchison & Company, Beneficial
3 National Life Insurance Company and the City of New York;
4 is that correct, sir?

5 A That is correct.

6 Q Did you contact any of these companies to ascertain
7 the amount of payments made to Dr. Wolf?

8 A Only the City of New York in regard to its payment.

B80 9 Q Would it be normal business procedure for these
10 companies to issue 1099's for payments made to an individual
11 such as Dr. Wolf?

12 MR. LAWYER: Objection.

13 THE COURT: Sustained.

14 Q Does the Internal Revenue Service require 1099's
15 which are information returns to be filed with regard to
16 payments of this type made to an individual?

17 A There are such regulations.

18 Q Therefore, Form 1099's could have been obtained
19 from these companies for payment made to Dr. Wolf?

20 MR. LAWYER: Objection.

21 THE COURT: I will permit it, if you can answer,
22 Mr. Skolnick.

23 A I don't know all the exact provisions of that --
24 of the regulations pertaining to that area.

25 Q Assuming he qualified and all these payments

1 from these companies fell within the provisions of the
2 Internal Revenue Code, would a Form 1099 be required?
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4 A I don't know. I can't adequately answer the
5 question because these payments were made on behalf of
6 patients and they were in the main in small amounts. I
7 can't adequately answer.

8 Q However, during the course of your investigation
9 you did not follow-up these payments?

10 MR. LAWYER: Objection.

11 THE COURT: You mean he didn't get out the 1099's?

12 MR. APPLEMAN: No. In other words, he did not
13 ask companies for the amount of payments made to the Doctor
14 or whether 1099's were issued to the Doctor.

15 MR. LAWYER: The whole line is improper because
16 he knows \$5. payments do not have to be reported. We are
17 talking about at least four \$5. payments.

18 THE COURT: I understand.

19 Can you answer it, Mr. Skolnick?

20 THE WITNESS: No, I can't.

21 THE COURT: He says, he can't answer it.

22 MR. APPLEMAN: If other payments were made by
23 these companies to Dr. Wolf?

24 THE WITNESS: No.

25 THE COURT: You are asking him did he get out the

1099's.

MR. APPLEMAN: No.

THE COURT: What is it that you are asking him?

MR. APPLEMAN: Did he contact the companies to determine the amount of payments made by these companies to Dr. Wolf and whether Form 1099's were filed.

THE COURT: There are two questions there. First, did you contact the companies and try to find out how much they paid him?

THE WITNESS: No, I did not.

THE COURT: The answer is "No".

Do you want anything more?

MR. APPLEMAN: No. Then there wouldn't be any 1099's.

THE COURT: All right.

Q Sir, I show you Government Exhibit 526 in Evidence. I refer you to page 8 in which there is listed under date of October 22, 1968 -- Do you have it? --

A Yes, I have it.

Q -- a check deposit of \$61.60. Do you see that item, sir?

A I do.

Q And you placed that in the column of unidentified income; is that correct, sir?

1 A That is so.

2 Q Could it have been a patient's check?

3 A Yes.

4 Q Could it have been an amount received from an
5 insurance company?

6 A On behalf of a patient.

7 Q Not for the patient. Could this have been re-
8 ceived from an insurance company with regard to an automobile
9 accident that the Doctor had?
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11 MR. LAWYER: Objection to that type of question.

12 THE COURT: Yes, sustained, speculative.

13 Q Is it possible that this was travel expenses from
14 Mt.Sinai Hospital?

15 MR. LAWYER: Objection.

16 THE COURT: Same ruling, yes. Sustained.

17 Q Did Mr. Edelstein relate to you how the returns
18 were sent to the Internal Revenue Service after they were
19 completed?

20 A I don't recall offhand. I would like to refer
21 to my report, if I may.

22 Q Could you look at your report?

23 A My report does not indicate it clearly, but I
24 believe the 1966, 1967 and 1968 tax returns were filed in
25 the Manhattan District and the 1969 return was sent to

the Andover Center.

Q Who mailed the returns?

A I don't know that. I don't recall it. It is not stated in my report.

Q Would you please look at your report at page 11? Perhaps that would refresh your recollection.

A Yes, my recollection is refreshed on this. Edelstein told me that he mailed the returns to either the Manhattan District or the Service Center after the Doctor signed the returns.

Q Did Edelstein ever see the bank statements and cancelled checks of the Doctor's bank account?

MR. LAWYER: Objection.

THE COURT: Sustained. I don't know how he would know.

Q Did Edelstein ever tell you that he saw the bank statements and cancelled checks of the taxpayer?

A Yes, only in the instance when the taxpayer's 1966 income tax return was under audit. He told me that he got the cancelled checks and bank statements from the Doctor.

MR. APPLEMAN: Your Honor, I have no further questions of this witness.

THE COURT: Do you have anything, Mr. Lawyer?

MR. LAWYER: Yes, sir.

2 REDIRECT EXAMINATION

3 BY MR. LAWYER:

4 MR. LAWYER: May this be marked as Government
5 Exhibit 90 for identification?

6 THE COURT: All right.

xx 7 [Government Exhibit 90 marked for Identification]

8 Q Mr. Skolnick, do you recall that Mr. Appleman
9 asked you questions on cross-examination concerning whether
10 you had determined whether any money from Dr. Wolf's father's
11 estate, when he passed away, was given to Dr. Wolf? Do you
12 recall that line of questioning?

13 A Yes, I do.

14 Q I have placed before you Government's Exhibit 90
15 for Identification. Can you identify that?

16 A Yes.

17 Q What is it?

18 A This is a petition to the State of New York
19 Surrogate's Court, County of New York, having the number
20 81 --

21 Q Nevermind the number, sir.

22 A It is a probate proceeding for the will of Arthur
23 Dewey Wolf, also known as Arther D. Wolf, deceased.

24 Q Did you check the will of Dr. Wolf's father, sir?

25 A Information was checked in the New York County

2 Surregate's Court relative to the filing of the will and
3 the contents.

4 Q Did you determine whether or not from the will,
5 sir, that Dr. Wolf received any of the inheritance?

6 A No, he was not a beneficiary of this will at all.

7 Q Who was the beneficiary?

8 A The sole beneficiary of the will was Dr. Wolf's
9 mother, Rae G. Wolf.

10 Q How do you spell Rae?

11 A R-A-E.

12 MR. LAWYER: I offer the will in evidence.

13 THE COURT: All right.

14 MR. LAWYER: I am showing it to Mr. Appleman.

15 MR. APPLEMAN: No objection, your Honor.

16 THE COURT: All right, mark it.

xx 17 [Government Exhibit 90 received in Evidence]

18 MR. LAWYER: No more questions.

19 THE COURT: Anything else?

20 MR. APPLEMAN: Yes, your Honor.

21 RECROSS-EXAMINATION

22 BY MR. APPLEMAN:

23 Q Is there anything herein which relates to the size
24 of the doctor's father's estate? I'm referring to Exhibit 90.

25 MR. LAWYER: Your Honor, it is a will. I presume

we can read it in evidence.

THE COURT: Yes.

If Mr. Skolnick can answer it I will permit him.

A It says under item 11: "Said decedent died seized of real property in the State of New York the value of which is \$18,000. and he died possessed of personal property having a value of \$50,000."

B81 Q Could the estate have been greater than \$50,000.?

A Yes.

Q Do you know for a fact that the estate was greater than \$50,000.?

A Yes, it was greater than \$50,000.

Q What was the value of the estate of Dr. Arther D. Wolf?

A The total value, I believe, was in excess of \$200,000., something like \$225,000. That was the gross estate of the real and personal property.

Q So that the estate of Dr. Arther D. Wolf, the defendant's father, was greater than \$225,000.?

A No, was approximately \$225,000.

MR. APPLEMAN: No further questions.

THE COURT: Anything else?

REDIRECT EXAMINATION [CONTINUED]

BY MR. LAWYER:

Q This will just refers to the property in the State of New York; isn't that correct?

A That is correct.

Q It has nothing to do with property in any other state?

A That is correct.

MR. LAWYER: No more questions.

THE COURT: Thank you, Mr. Skolnick, you may be excused.

[Witness excused]

THE COURT: Mr. Foreman, members of the jury, I think we will take a few minutes recess now. You may retire to the jury room.

[Recess]

THE COURT: All right, Mr. Lawyer.

MR. LAWYER: The Government calls Anthony J. Passaretti.

1 A N T H O N Y J . P A S S A R E T T I, called as a
2
3 witness by the Government, being first duly sworn,
4 testified as follows:

5 DIRECT EXAMINATION

6 BY MR. LAWYER:

7 Q How do you make a living, Mr. Passaretti?

8 A I am an Internal Revenue agent.

9 Q How long have you been an Internal Revenue agent?

10 A I am in my thirtieth year.

11 Q Just tell us briefly what you do as an Internal
12 Revenue agent.

13 A We have responsibility for making audits of
14 returns filed by individuals, corporations, trusts and other
15 forms of business.

16 Q Prior to becoming an Internal Revenue agent did
17 you study accounting?

18 A Yes, I did.

19 Q Where?

20 A CCNY.

21 Q Have you testified as an expert witness in criminal
22 tax cases?

23 A Yes, I have.

24 Q About how many such cases have you testified in?

25 A Approximately 150 times.

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2 Q Have you also testified as an expert in civil
3 tax matters?

4 A Yes, I have.

5 Q About how many times?

6 A About ten times.

7 Q Have you audited tax returns before?

8 A Yes, I have.

9 Q About how many?

10 A Several thousand.

11 MR. LAWYER: We submit that Mr. Passaretti is
12 qualified to testify as an expert in this case.

13 THE COURT: Yes, I so rule.

14 Q Over the past two weeks, Mr. Passaretti, have you
15 examind various Government exhibits in this case?

16 A Yes, I have.

17 Q Have you also listened to testimony of various
18 witnesses in this case?

19 A I did.

20 Q Have you read transcripts of the testimony of
21 certain witnesses in this case?

22 A Yes, I did.

23 Q Did you on the basis of the exhibits you have
24 seen, testimony you have read and testimony you have
25 listened to, sir, compute the taxes of Dr. Robert L. Wolf

1 based on evidence in this case?

2 A I did.

3 Q Did you also look at Dr. Wolf's tax returns, that
4 is, Government Exhibits 1 thru 4?

5 A Yes, I did.

6 Q I show you Government Exhibit 7 in Evidence, sir,
7 which is a schedule prepared by Special Agent Morris Skolnick.
8 Did you see that before?

9 A Yes, I did.

10 Q Did you refer to Government Exhibit 7 to any extent
11 in preparing your computations of Dr. Wolf's taxes?

12 A Yes, I did.

13 Q What information did you take from Government
14 Exhibit 7?

15 A Government Exhibit 7 consists of a summary of all
16 of the evidence in the trial to date and the bottom line
17 is the unreported professional income which was the starting
18 point for my computations.

19 Q The bottom line of Government Exhibit 7 was the
20 starting point for you?

21 A Yes, sir.

22 Q Did you prepare schedule, that is charts, of your
23 computations for the years 1966 thru 1969 pertaining to
24 this case?
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A I did.

Q I ask you to look at Government Exhibits 8A, 8B, 8C and 8D for Identification which I have placed before you. Are those the charts or schedules, sir, that you just referred to?

A Yes, they are.

Q Look first at Government Exhibit 8A, sir, and tell us what 8A is.

A Exhibit 8A is a schedule I prepared for the individual tax return filed by the Doctor for the year 1966, modifying it to the extent that adjustments were made during this trial.

MR. LAWYER: We offer Government Exhibit 8A for Identification into evidence.

THE COURT: All right, show it to Mr. Appleman.
Any objection?

MR. APPLEMAN: No objection, your Honor.

THE COURT: All right, mark it.

[Government Exhibit 8A received in Evidence]

Q I refer to Government Exhibits 8A, 8B, 8C and 8D. Please tell us in chronological order what those exhibits are, sir?

A Government Exhibits 8B, 8C and 8D are schedules that I prepared for each of the years 1967, 8C is 1968

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and 8D is 1969. The schedules are identical to Government Exhibit 8A.

MR. LAWYER: We offer 8B, 8C and 8D, your Honor.

May the record reflect that the defendant has been given copies.

THE COURT: All right. Any objection?

MR. APPLEMAN: No objection, your Honor.

THE COURT: All right, mark them.

[Government Exhibits 8B, 8C and 8D received in Evidence]

MR. LAWYER: I now ask permission to pass copies, first, of 8A to the jury and to have Mr. Passaretti explain it.

THE COURT: All right.

Q Mr. Passaretti, would you explain Government Exhibit 8A in Evidence to the jury, sir?

A Exhibit 8A reflects the tax return filed by Dr. Wolf for the year 1966. The items on the left would be the items that were on the tax return. The first column is headed "Tax Return, Government Exhibit 1", and consists of a column of figures which were taken from the tax return. The next column is marked "Increase" which shows just the amounts that were adjusted by the evidence in this trial. The last column shows all of the figures that were on the

tax return and the adjustment from the evidence in this trial and that column is marked "Government Contention".

The first section consists of the income items and they show salary from Mt.Sinai Hospital in the amount of \$8,269.99; dividend income of \$642.70; interest income of \$435.77; capital gain of \$3,159.52; income from profession, \$4,126.02.

The evidence in this trial indicates that that amount is to be increased in the amount of \$24,301.42 for a total of \$28,427.44.

Q Is that amount of \$24,301.42 the increase taken from the bottom line of Mr.Skolnick's schedule, Government Exhibit 7?

A Yes, sir.

The next line is the total income. The first column shows the total income for the income tax return of \$16,634.; the second column shows the increase of \$24,301.42, and the last column, the Government's contention, shows that the total income for the year 1966 amounts to \$40,935.42. The amount is adjusted to reflect a decrease of \$183.37 which was found on the tax return, Exhibit 1. The same decrease was given affect too in the last column. The next line is balanced. After this deduction the amount was \$16,450.63 per the tax return and \$40,752. for the Government's contention.

2 The next line is itemized deductions totaling \$4,431.
3 for the tax return and the same amount was allowed in the
4 column for the Government's contention.

5 The balance of \$12,019.63 in the column marked tax
6 return and the balance of income of \$36,331.05 in the last
7 column. The next line are the exemptions. The tax return
8 reflects that two exemptions were claimed in the amount of
9 \$1200. The same exemption was allowed in the computation
10 for the Government's contention.

11 The next line is taxable income. The tax return reflects
12 \$10,819.63 as taxable income. This schedule shows that the
13 increase to the taxable income amounts to \$24,301.42 for
14 total taxable income and the Government's contention of
15 \$35,121.05.

16 The next line is the tax and above income the tax
17 shown on the tax return was \$2,221.30. The tax that I
18 computed on these figures in the schedule amounts to
19 \$13,863.94. This computation gives effect to the increase
20 in the income as reported on the return. The difference
21 between the tax on the tax return and the tax as reflected
22 in this schedule shows a deficiency of income tax in the
23 amount of \$11,642.64.

24 Q That is all tax?

25 A That is additional tax.

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MR. LAWYER: I now ask to take from the jury the 1966 schedule and to have Mr. Passaretti explain Government Exhibit 8B.

THE COURT: Yes, you may.

Please refer to Government Exhibit 8B in Evidence, Mr. Passaretti and explain that, please.

A Government Exhibit 8B is the schedule that I prepared for the year 1967. I used the same format showing the figures taken, the tax return, the increase per the exhibits in this trial and the last column showing the computations showing the Government's contention. That income showed salary, Mt. Sinai Hospital, \$8,446.30; dividend income in the amount of \$1,432.05; interest income in the amount of \$809.08; capital gain of \$1,937.92; income from profession in the amount of \$3,099.22.

The next column reflects an increase in the amount of \$22,423.30, which item was taken from the summary sheet of Government Exhibit 7 for the year 1967. The total income from profession per the Government's contention amounts to \$25,522.52.

The next line is the total income for the tax return. The amount was \$15,724.57, an increase of \$22,423.30 added to this amount gives the total income for the Government's contention of \$38,147.87.

The next line is the itemized deductions, this figure of \$9,064.99 was taken from the tax return, Government Exhibit 2, and was allowed as claimed in the Government's contention, the last column.

Q Did the Government contest any of the deductions at anytime?

A For purposes of this computation or purposes of this trial the deductions claimed were allowed in full without independent verification or without question, without change.

Q The Government allowed Dr. Wolf everything he claimed?

A In the amount claimed.

The next balance of income the tax return shows \$5,859.58 and the Government's contention of the balance was \$28,282.88.

The next item are exemptions. Again the tax return reflected two personal exemptions in the amount of \$1200. The same exemptions were allowed in the Government's computation.

The next line was his taxable income for the tax return of \$4,659.58, increased by the exhibit in the trial in the amount of \$22,423.30 for total taxable income per the Government's contention of \$27,023.88.

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The tax on the above income - the tax reflected on the tax return amounted to \$791.92. Computation of the tax on the corrected income amounted to \$9,603.93 for a deficiency of income tax in the amount of \$8,812.01.

MR. LAWYER: May I have permission now to withdraw from the jury the contents of Government Exhibit 8B and to have Mr. Passaretti explain Government Exhibit 8C?

THE COURT: Yes, you may.

Q Please explain Exhibit 8C in Evidence, Mr. Passaretti.

A Government Exhibit 8C is a schedule I prepared for the individual tax return of Dr. Robert L. Wolf for the year 1968.

Q You keep saying individual, sir. Does that just mean Dr. Wolf himself?

A Yes, sir.

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Q As distinguished from Dr. Wolf and, say, his spouse?

A That is right, sir, and also as distinguished from a corporation or some other entity.

The first section "income" shows salary from Mount Sinai in the amount of \$9,236.58 as reflected on the tax return filed, Government exhibit 3. Dividend income was reported in the amount of \$1,147.25; interest income reported, \$1,618.76; capital gain, \$8,085.36; income from profession was reported in the amount of \$4,181.17.

The exhibits in this trial indicate that this amount should be increased by \$42,458.53, which would be the total reflected at the summary sheet of Government exhibit 3 for the year 1968. The total income from profession as corrected amounts to \$46,639.70. The total income per tax return amounted to \$24,296.14. The increase for the year 1968 was \$42,458.53. The total income as corrected, \$69,754.67. Itemized deductions claimed on the tax return amounted to \$10,664.05. The same amount was allowed in this computation.

Q So the government in this situation also allowed everything Dr. Wolf claimed?

A On the tax return, yes, sir.

Q Without challenge whatever?

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2 A Without change.

3 The next line is the balance. The net income,
4 \$13,612.09 on the tax return and \$56,070.62. The Govern-
5 ment's contention. Exemptions claimed in the tax return
6 in the amount of \$1200. The same exemptions were allowed
7 in this computation. The taxable income reported on the
8 tax return was \$12,412.09. This figure was increased in the
9 amount of \$42,458.53 for a taxable income as corrected in
10 the amount of \$54,870.62.

11 Tax on the above income per the tax return was
12 \$2,667.75. The Government contends that it should have been
13 \$24,730.83.

14 There was additional to the tax a surcharge in
15 the amount of \$200.08 completed on the return and the
16 \$1,852.79 computed in this computation. The tax per the
17 tax return was \$2,067.83. The total tax for this computa-
18 tion was \$26,556.62. The deficiency of income tax for the
19 year of 1968 amounted to \$23,660.79.

20 MR. LAWYER: Your Honor, may I have permission
21 to take from the jury exhibit 8C and, finally, to explain
22 exhibit 8D in evidence?

23 THE COURT: You may.

24 Q Please explain government 8D in evidence, sir?

25 A Government exhibit 8D is the schedule I prepared

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2 for the tax return of Dr. Robert Wolf for the year of 1969.
3 The income section reflected salary income from Mount Sinai
4 Hospital in the amount of \$6,429.88 reported on the tax
5 return, Government exhibit 4. Dividend income, \$220; interest
6 income, \$66.31; capital gain \$11,466.18; income from profes-
7 sion was shown on the tax return as a loss in the amount of
8 \$5,534.52.

9 Q That is to say the defendant claims he lost money
10 that year?

11 A That is right. Schedule C, which reflects the
12 income from the profession, showed a loss of the amount of
13 \$5,000 --

14 Q Is that the figure in brackets?

15 A That is right, sir.

16 Q The next column reflects the increase in the
17 income from profession as determined by the exhibit and testi-
18 mony in this trial. The amount was \$42,671.55, the bottom
19 line of Government exhibit 7, the summary statement. The
20 increase in professional income of \$42,617.85 is the last
21 line on Government exhibit 7, the summary of the evidence
22 that was shown in this trial. The corrected income from the
23 profession amounts to \$37,137.03. The total income for the
24 tax return, \$12,647.85. The increase for the year 1969
25 amounted to \$42,671.55. The corrected total income was

1 mceg 4

Passaretti-direct

2 \$55,319.40. Itemized deducted claimed on the return amounted
3 to \$7,748.60. Same deductions were allowed herein.

4 Q Why were these deductions not challenged, sir?

5 A In the interest of reducing this additional
6 tax liability to the lowest possible amount for purposes of
7 this trial no challenge was made and no changes were made in
8 any of the items of income from salary, dividends or interest,
9 capital gain or the itemized deductions.

10 Q You simply gave the tax payer everything he
11 wanted?

12 A We merely showed the amount shown on the tax
13 return.

14 Q Proceed.

15 A The balance of income for the year 1969 per
16 tax return, \$4,899.25 and per the Government's contention,
17 \$47,570.80. The personal exemptions claimed on the tax
18 return in the amount of \$1200. The same exemptions were
19 allowed herein. The taxable income per the tax return,
20 \$3,699.25. The increase for the year 1969, \$42,671.55.
21 The corrected taxable income for 1969, \$46,370.80.

22 Tax on the above income as shown by the income
23 tax return was \$605.86. The tax as computed in this trial
24 is \$19,540.63. The tax surcharge for the year 1969 per the
25 tax return was \$61 and for this computation \$1,954.06.

mccg 5

Passaretti-direct

The total tax shown on the tax return was \$666.86. The total tax per this computation was \$21,494.69 showing a deficiency of income tax for the year 1969 in the amount of \$20,827.83.

85

MR. LAWYER: May these exhibits be withdrawn?

THE COURT: Yes.

MR. LAWYER: May this be marked as Government Exhibit 8E for identification?

xxx

(Government Exhibit 8E marked for identification.)

MR. LAWYER: May this be marked as Government Exhibit 8 for identification?

xxx

(Government exhibit 8 marked for identification.)

Q I ask you to look first at Government Exhibit 8 for identification. Can you identify that?

A Yes, I can.

Q What is Government exhibit 8?

A Government exhibit 8 is a summary of the taxable income and the tax liabilities for the four years, 1966, through 1969 for Dr. Wolf.

Q Is the information contained in Government exhibit 8 for identification basically what you have just testified to, sir?

A Yes, it is.

Q Did you double check Government exhibit 8 for

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correctness so far as the figures contained on it?

A Yes, I did.

MR. LAWYER: Your Honor, we offer Government exhibit 8. May the record reflect that Defense counsel has a copy.

THE COURT: Any objection?

MR. APPLEMAN: No objection, your Honor.

THE COURT: All right, mark it.

(Government exhibit 8 received in evidence.)

Q Now, Mr. Passaretti, would you look at Government exhibit 8E on the easel, sir? What is that?

A This is a blow-up of Government exhibit 8.

Q Simply a photographic blow-up identical to exhibit 8?

A Yes, sir.

MR. LAWYER: Your Honor, we offer exhibit 8E simply as an aid to the jury.

THE COURT: Of course. Any objection?

MR. APPLEMAN: No objection, your Honor.

THE COURT: All right, it will be received.

(Government exhibit 8E received in evidence.)

MR. LAWYER: May I ask that the jury be inquired of as to whether they can see it? If not, I will offer to give them individual copies.

xxx

xxx

1 mceg 7

Passaretti-direct

2 THE COURT: If you have individual copies it
3 will be a good idea.

4 MR. LAWYER: Very good.

5 Q Looking at Government exhibit 8 for identifica-
6 tion, sir, please briefly explain it.

7 A Government exhibit 8 is the summary schedule
8 showing the taxable income and the income tax liability
9 of Dr. Robert Wolf for the years 1966 through 1969. It
10 consists of two sections. The first section reflects the
11 taxable income for those years in the amounts reported on
12 the tax return, the corrected taxable income, and the last
13 column shows the net increase for each of the four years.
14 Then there is a line which tells the four years. The next
15 section shows the tax liability for four years, shows the
16 tax return figure, shows the corrected tax liability and
17 the last column would be the deficiency in each of the years
18 and the total for the four years.

19 Q Is Government exhibit 8, sir, simply a composite
20 form of the documents marked Government exhibits 8A, 8B,
21 8C and 8D?

22 A Yes, it is a recap of the computations made in
23 each of the years and shown on one schedule.

24 MR. LAWYER: Your Honor, we ask that these
25 documents be taken back.

1 mceg 8

Passaretti-direct

2 THE COURT: All right, Mr. Clerk.

3 Q Mr. Passaretti, in the course of your service as
4 a revenue agent, sir, are you familiar with the forms called
5 1099's?

6 A Yes, I am.

7 Q What are they?

8 A A form 1099 is an information form required by
9 the government of people who are engaged in trade or business.
10 It is to be filed each year by the business or the individual
11 engaged in the trade or business reflecting payments to any
12 individuals for certain items of income.

13 Q How are they required to be filed?

14 A They are required to be filed with a letter of
15 transmittal by the end of the first month of the year follow-
16 ing the year of payment based on the calendar year of acti-
17 vity.

18 Q What is the minimum amount of money as to when
19 you are supposed to file one?

20 A There are two minimums. For most purposes
21 \$600 is the amount that is required to be shown as having
22 been paid within a taxable year. In the instance of corpora-
23 tions and banks or savings and loan institutions they are
24 required to show information returns reflecting payments of
25 \$10 or more to each of their stockholders as a dividend or

1 mceg 9

Passaretti-direct/cross

2 to their depositors as interest income on their savings for
3 the year.

4 Q What happens if you don't file one?

5 A The individual who is required to file one is
6 subject to a penalty. I think the amount is \$10 for each
7 1099 not filed to a maximum of \$25,000.

8 Q When was that true?

9 A That was true for all of the years involved in
10 this trial, sir.

11 Q Is it your experience that these things are
12 always filed?

13 A I have seen an awful lot of them. I'm almost
14 sure that they are almost always filed.

15 MR. LAWYER: I have no further questions.

16 CROSS-EXAMINATION

17 BY MR. APPLEMAN:

18 Q Mr. Passaretti, you stated that you have been
19 present at the trial and you have heard the evidence sub-
20 mitted. With regard to Government exhibit 8A in evidence,
21 the increase shown as \$24,301.42 in that year, would that
22 include amounts shown on forms 1099?

23 MR. LAWYER: I think that is a speculative
24 question.

25 THE COURT: If he can answer it, he may.

1 mceg 10

Passaretti-cross

2 MR. LAWYER: Not "should it."

3 MR. APPLEMAN: Your Honor, we have exhibit 15--

4 THE COURT: We needn't argue about it. I will
5 permit the question. Overruled.

6 Can you answer it?

7 THE WITNESS: I think the increase of \$24,301
8 for the year 1966 does include items which were reported on
9 1099's.

10 Q Does the item of \$22,423.30 as reflected in
11 Government exhibit 8B in evidence, also include items re-
12 flected on 1099's?

13 A Yes, it would.

14 Q Does the amount of \$42,458.53 as reflected in
15 Government exhibit 8C, increase in income, also include those
16 items which will be shown on form 1099's?

17 A Yes, it does.

18 Q With regard to Government exhibit 8D, would the
19 increase as shown per this document of \$42,671.55 reflect
20 the form 1099's?

21 A Yes, it does.

22 Q Would companies such as United Medical Service,
23 ITT, Aetna Life Insurance Company, Prudential Insurance
24 Company, Guardian Life Insurance Company, Royal Globe Insurance
25 Company, Illinois Mutual Life and Casualty Company, Canada

1 mecg 11

Passaretti-cross

2 Life Insurance Company, American Heart Association Incor-
3 porated, American Buff International, Consolidated Edison,
4 Sperry-Hutchison and Company, Beneficial National Life
5 Insurance Company and the City of New York be required to
6 file form 1099's for amounts paid to Dr. Wolf, assuming
7 those amounts met the minimum requirements of the Internal
8 Revenue Code?

9 A Yes, they would.

10 Q With regard to the capital gains as reflected
11 on the taxpayer's 1966 income tax return, referring to
12 Government exhibit 8A, shown therein to be \$3,159.52, were
13 there any adjustments to that figure as reflected on the
14 return?

15 A No, sir.

86 16 Q Referring to Government exhibit 8B for the year
17 1967, were there any adjustments either increasing or de-
18 creasing the amount reflected on the taxpayer's income tax
19 return for capital gains?

20 A No, sir.

21 Q With regard to the year 1968, referring to
22 Government exhibit 8C, was there any adjustments made to the
23 capital gain of over \$8,000 reflected on the taxpayer's
24 income tax return?

25 A No, sir.

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Q Referring to Government exhibit 8D for the 1969 return, was there any adjustments to the taxpayer's reported capital gains on his 1969 income tax return?

A No, sir.

Q Therefore, the only adjustment would be for the bank deposits per the special agent's report and the deposits would also be reflected by form 1099's. In other words, could this unexplained bank deposits be duplicated by form 1099's?

A They could be. I can't answer with any degree of certainty.

Q In other words, the amount of increase which is reflected for each of the government exhibits 8A, 8B, 8C and 8D could be duplicated by forms 1099 issued by these companies?

THE COURT: What does that mean, "could be duplicated"?

Q In other words, if the companies issued 1099's and we have admitted that this figure can include also those figures which are reflected on the 1099's, that is, the duplication I am referring to --

A In the exact amount, sir?

Q -- in the exact amount or greater or less --

A I think you could find 1099's reflecting income that was deposited in each of these four years but under no

mcg 13 Passaretti-cross

circumstances would you have 1099's in the amount of this increase. You would not have 1099's reflecting this total increase for each year of the four years.

Q Why do you say that?

A Because in no way would patients be required to file a 1099 and the only 1099's that would have come in were from the large medical services and those amounts did not exceed the amount that was --

Q You are referring to the amount that the special agent **obtained** such as United Medical Service and ITT and with regard to Aetna, Prudential, Guardian, Royal, et cetera, we do not know what that amount is and that amount could have exceeded --

MR. LAWYER: Your Honor, I object to the testimony from the lawyer.

THE COURT: Yes, of course. Sustained. Next question.

Q Are there any figures included in the increase as reflected in Government exhibits 8A, through 8D for travel reimbursement expenses received from Mount Sinai Hospital?

A I would think no.

Q Do you know?

A I don't know positively. If there were unidenti-

1 mccg 14 Passaretti-cross/redirect

2 fied deposits or it was made part of the composite deposit,
3 I would not be able to identify it.

4 MR. APPLEMAN: I have no further questions,
5 your Honor.

6 THE COURT: All right, Mr. Lawyer.

7 REDIRECT EXAMINATION

8 BY MR. LAWYER:

9 Q Mr. Appleman read off to you a list of institu-
10 tions, Beneficial, Aetna, Royal Globe and other companies
11 like that and asked you a question, in substance, as to
12 whether or not that money could be duplicated. In preparing
13 a bank deposits case, sir, is it not so that every possible
14 step is taken to eliminate any duplication whatever?

15 A Yes, sir, and in this case we went one step
16 further and after we identified those non-taxable or transfer
17 items and eliminated them from the computation, we went a
18 step further and eliminated the balance of salary checks,
19 cashed checks, personal checks which we would have no way of
20 knowing were in bank deposits or used personally. We reduced
21 the total unreported income by those amounts.

22 Q So that in effect the Internal Revenue Service
23 took the position that Dr. Wolf didn't spend a dime on himself
24 for living expenses?

25 A Well, that would have to be the interpretation.

1 mcg 15

Passaretti-redirect/recross

2 MR. LAWYER: I have nothing further at this
3 time.

4 THE COURT: Mr. Appleman?

5 RECROSS-EXAMINATION

6 BY MR. APPLEMAN:

7 Q However, no effort was made to ascertain if 1099's
8 were issued by companies other than United Medical Service
9 and ITT?

10 MR. LAWYER: I object, your Honor, the question
11 has been improperly redirect.

12 THE COURT: I will permit it.

13 A I can't say that I made any of those efforts. I'm
14 positive that some of the agents may have made an effort
15 and either they did receive these items or they did not
16 receive them, because there was a point at which the investi-
17 gation had to be a cutoff and the report written.

18 MR. APPLEMAN: No further questions.

19 THE COURT: Anything else?

20 MR. LAWYER: No more questions.

21 THE COURT: Thank you, Mr. Passaretti, you may be
22 excused.

23 (Witness excused.)

24 MR. LAWYER: Your Honor, may I just have 60
25 seconds with my colleague?

mccg 16

THE COURT: Yes, of course.

(Pause.)

MR. LAWYER: Your Honor, we rest.

THE COURT: I will see counsel at the side bar.

(At the side bar.)

THE COURT: Do you want to make your motions?

MR. APFLEMAN: I will make a motion to dismiss.

the case based on the following:

One, based on the fact that the accountant admitted that the receipts reflected on his returns did not include the forms 1099 and W-2's; that there was error on the returns and it was solely his responsibility; that the agent did not follow through on the Holland issue and the leads doctrine to follow up all these with regard to these form 1099's so that we could more than prove the taxpayer's contentions there. We move for a dismissal based on that.

THE COURT: The motion is denied.

All right, the defendant will present the defendant's case.

(In open court.)

MR. APFLEMAN: The first witness I will call is Ina Nager Wolf.

May I please approach the bench once again?

THE COURT: All right.

1 mceg 17

2 (At the side bar.)

3 MR. APPLEMAN: The defendant is considering
4 taking the stand. I would like to have a ruling as to his
5 testimony given at his divorce or matrimonial action.
6 What we would like is a ruling with regard to the testimony
7 as given by Dr. Wolf at that hearing that it be barred from
8 this case.

9 THE COURT: I don't quite understand what it is
10 you are asking me. You are saying that if the defendant
11 takes the stand you don't want the government to be able to
12 use the testimony he gave at his divorce action?

13 MR. APPLEMAN: That is right.

14 THE COURT: I don't know. Were you planning to
15 use it, Mr. Lawyer?

16 MR. LAWYER: Yes, sir.

87 17 THE COURT: I will have to rule on that later.
18 I don't know what it is.

19 MR. APPLEMAN: It involves testimony with regard
20 to his marital dispute and certain testimony that he gave
21 pertaining thereto which has nothing to do with this case.

22 THE COURT: I can't rule on that now. I will
23 have to take that up in the future.

24 (In open court.)

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I N A H O P E W O L F N A G E R, called as a
witness in behalf of the defendant, after having been
duly sworn testified as follows:

DIRECT EXAMINATION

BY MR. APPLEMAN:

Q Mrs. Nager, do you know a person by the name of
Robert L. Wolf?

A Yes.

Q Is he in this courtroom today?

A Yes.

Q Would you please identify him?

A The gentleman at the second table.

MR. APPLEMAN: If it please the court --

THE COURT: Yes, the identification is made.

Q Are you related to Dr. Wolf?

A Yes.

Q What is your relationship to Dr. Wolf?

A I am his sister.

Q Do you know the extent of your father's estate?

A Yes.

Q I'm sorry. First, when did your father die?

A My father passed away in 1966.

Q What was the size of his estate?

A I believe \$200,000.

1 mceg 19 Nager-direct

2 MR. LAWYER: Your Honor, she says she believes.

3 THE COURT: Yes, that is what I understood her
4 to say.

5 MR. LAWYER: Could we have some --

6 THE COURT: As I permit you to cross-examine.

7 MR. LAWYER: I'm sorry.

8 Q Prior to your father's death, did he ever give
9 you any gifts?

10 A Yes.

11 Q Would these gifts be of a sizeable nature?

12 MR. LAWYER: I object to the line of question-
13 ing.

14 THE COURT: Sustained. The income of this lady
15 is not at issue here.

16 Q Did there ever come a time during the years
17 1966 to 1969 that your brother asked you for money?

18 A Yes.

19 Q Can you please state the amounts advanced to
20 your brother for the years 1966, 1967, 1968 and 1969?

21 A 1966 to 1969?

22 Q That is right.

23 A In that interim of time I gave him about 8
24 maybe 9 thousand dollars.

25 Q Did you give him that all in one lump sum?

1 mceg 20

Nager-direct

718

2 A No, sir.

3 Q How was this money given to Dr. Wolf?

4 A It was given to him in cash, whatever cash I had
5 available at that moment when he needed it.

6 Q Did you ever give him amounts in excess of \$2000?

7 A At one time?

8 Q Yes.

9 A No.

10 Q Did you ever give him amounts in excess of
11 \$1000 at one time?

12 A No.

13 Q Did you ever give him amounts in excess of \$500
14 at one time?

15 A Around that amount.

16 Q That would be the most?

17 A The maximum amount at one time.

18 THE COURT: And this was all in currency?

19 THE WITNESS: Yes, sir.

20 THE COURT: Did you ever inquire or did the doctor
21 ever tell you as to why he needed this money?

22 MR. LAWYER: Objection.

23 THE COURT: Sustained.

24 Q Did the doctor during this period of time repay
25 you any sums of money?

mccg 21 Nager-direct/cross

A No, sir, he didn't.

Q When you gave him this money did you and do you now expect to repayment?

A I do in the future.

Q Did you keep a record of the amount you gave the doctor?

A No, I don't keep records of anything.

Q However, you estimate that you gave him in the neighborhood of \$8,000?

MR. LAWYER: I object.

THE COURT: Overruled.

A I estimate that.

MR. APPLEMAN: No further questions, your Honor.

THE COURT: All right.

CROSS-EXAMINATION

BY MR. LAWYER:

Q You keep no records whatever of the money you gave your brother?

A No, none whatever, no records of any sort.

Q How do you limit the years to the years from 1966 to 1969?

A That was the period of time when he asked for money.

Q Not before 1966?

1 mceg 22

Nager-cross

2 A No.

3 Q Can you break it down by year, then, as to how
4 much, approximately, you gave him, say in 1966?

5 A I cannot on that at all, sir.

6 Q Did you give him anything like \$11,642.64 in
7 1966?

8 A I doubt that very very much.

9 Q Did you give him anything like \$8,812.01 in 1967?

10 A I doubt that very much.

11 Q Did you give him anything like \$23,688.79 in
12 1968?

13 A May I see your figures, since you are quoting
14 these things?

15 Q You just answer the question. I gave you the
16 figure \$23,688.79 in 1968. Did you or did you not?

17 A I cannot estimate in any year how much I gave.

18 Q For the whole three years you gave him at most
19 \$9,000?

20 A I didn't say that. I said around \$8,000.

21 Q So even less than I thought. In 1969 did you
22 give him, like, \$20,827.83?

23 A Sir, I think I answered that when I said how
24 much I gave.
25

MR. LAWYER: Your Honor, may the witness be

1 mceg 23 Nager-cross

2 directed to answer?

3 THE COURT: The answer is so obvious.

4 Q You gave him close to \$64,000, is that correct,
5 all together?

6 THE COURT: No. \$8,000 is the most you gave,
7 isn't that it?

8 THE WITNESS: I believe I said that, sir.

9 Q Did you help Dr. Wolf at his office at all?

10 A No, sir.

11 Q Are you able to say whether he had a bank account
12 in Switzerland?

13 A I do not know the business of my brother there.
14 I don't know where he has his bank accounts or if he has none
15 at all.

16 MR. LAWYER: I have no more questions.

17 THE COURT: Anything else?

18 MR. APPLEMAN: No more questions.

19 THE COURT: Thank you, Ma'am, you may be
20 excused.

21 (Witness excused.)

22 MR. APPLEMAN: I call Mrs. Rae G. Wolf. I under-
23 stand from the doctor that -- this is his mother -- that she
24 is hard of hearing.

25 THE COURT: All right.

1 mcs 24

2 MR. APPLEMAN: This is my last witness for today
3 that I have available, his mother. I never expected to go
4 this far. I will either have two or three witnesses on
5 Monday and that will be the defendant's case.

6 THE COURT: Let's finish with her and then we
7 will take up your problem.

8 MR. APPLEMAN: All right.

9

- - -

10 R A E G. W O L F, called as a witness on behalf of
11 the defendant, after having been duly sworn, testified
12 as follows:

13 DIRECT EXAMINATION

14 BY MR. APPLEMAN:

15 Q Mrs. Wolf, am I speaking loud enough?

16 A Will you talk a little louder?

17 Q Mrs. Wolf --

18 A Yes, I can hear you.

19 Q -- do you know Robert L. Wolf?

20 A My son.

21 Q Is he here in the courtroom?

22 A Yes, he is right there.

23 Q Will you please identify him?

24 A Yes.

25 MR. APPLEMAN: Your Honor --

1 mecg 25

R. G. Wolf-direct

2 THE COURT: Yes.

3 Q Mrs. Wolf, what was your husband's name?

4 A Dr. Arthur D. Wolf.

5 Q What was your husband's occupation during his
6 lifetime?

7 A A dentist.

8 Q When did Dr. Wolf die?

9 A He died in 1966.

10 Q Did he leave an estate?

11 A Yes, sir.

12 Q Were you the sole beneficiary of that estate?

13 A Yes, sir.

14 Q What was the size of that estate?

15 A I don't remember, but it is -- I don't remember.
16 Probably \$200,000 or something like that.

17 Q During Dr. Wolf's lifetime -- I am talking about
18 your husband now -- did he give you any money?

19 A He gave me an allowance.

20 Q What was the amount of that allowance?

21 A Money I saved.

22 Q The amount of the allowance?

23 A It was from \$50 when we started to \$125 when he
24 made money.

25 Q Is this per week or per month?

1 mceg 26 R.G.Wolf-direct

2 A Per week.

83 3 Q In other words, during your husband's lifetime
4 he commenced giving you \$50 a week?

5 A Yes.

6 Q Was that for food or food, clothing, and shelter?

7 A That was for food.

8 Q Did your husband pay for clothing?

9 A Yes.

10 Q Your utilities?

11 A Yes.

12 Q Your rent?

13 A Yes.

14 Q Did you use this money to purchase food?

15 A I purchased food.

16 MR. LAWYER: I am going to object to this con-
17 tinual line.

18 THE COURT: Yes, sustained, irrelevant.

19 Q Did you save any portion of the monies given to
20 you by your husband?

21 A Yes, I put away every week.

22 Q Where did you put this money?

23 A I put this money in my safe in my home. I kept
24 the money in my home.

25 Q Did you have a safe in your home?

1 mceg 27 R. G. Wolf-direct

2 A Yes, I had a safe in my home.

3 Q Was it a combination safe?

4 A It was a combination safe.

5 Q Did your husband have the combination?

6 A Yes.

7 Q Did you have the combination?

8 A Yes.

9 MR. LAWYER: I am going to object to this line.

10 THE COURT: Completely irrelevant. I agree.

11 Q Did there ever come a time that you gave your
12 son any money?

13 A Yes, I gave my son money.

14 Q You remember when you gave him the money?

15 A I gave him money from 1959 to -- let me see --
16 1968.

17 Q Was there any occasion where you were giving him
18 money in 1959?

19 A Yes. He just was starting out and he was married.

20 MR. LAWYER: I object to that.

21 THE COURT: Yes, 1959 isn't involved. Let's
22 get to 1966.

23 Q Did you give your son any money during the years
24 1966 to 1969?

25 A Yes, I gave him -- 1966 I gave him money.

1 mceg 28 R.G.Wolf-direct

2 Q Do you remember the occasion that you gave him
3 money in 1966?

4 A Yes, he needed money.

5 MR. LAWYER: Objection.

6 THE COURT: Yes, I don't think it makes any dif-
7 ference, just how much did she give him.

8 Q How much money would you estimate you gave your
9 son for the years 1966 to 1969?

10 A I don't remember the exact sum, but I gave him
11 money. He needed the money and I gave him the money.

12 Q Could this have amounted to \$5,000 in 1966?

13 A Yes, sir.

14 Q Could this have amounted to \$20,000 in 1966?

15 A A little less than that.

16 MR. LAWYER: He is reading.

17 THE COURT: Sustained. It is not "could it have
18 amounted to?" But how much was it.

19 Q How much money did you give your son in 1966?

20 A I don't remember, sir what I gave for 1966. I
21 gave him over a period.

22 THE COURT: Did you keep any records, Madam, at
23 all?

24 THE WITNESS: No.

25 THE COURT: No records at all?

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R.G.Wolf-direct

THE WITNESS: No. You see, sir, it was my name
and my son's name.

THE COURT: Did you pay him by check? Did you
give it to him by check?

THE WITNESS: No.

THE COURT: You just counted it out in currency?

THE WITNESS: I gave it in currency.

THE COURT: So you have no record of how much it
was?

THE WITNESS: I gave him money. I gave him about
\$15,000 to \$18,000 during the time, but I don't remember when.

MR. LAWYER: I move that it be stricken.

THE COURT: I will let it stand. Let's go on.

MR. APPLEMAN: I have no further questions.

THE COURT: \$15,000 to \$18,000 over a period of
how many years?

THE WITNESS: 1959 to 1968 or 1969.

THE COURT: But you don't know in what years?

THE WITNESS: No, sir.

THE COURT: Or in what amount?

THE WITNESS: No, sir.

THE COURT: But the total was \$15,000 to \$18,000?

THE WITNESS: Each year I gave him a sum. I
gave him a sum each year, sir. I gave him a sum each year,

1 mceg 30 R.G.Wolf-cross

2 sir, \$1,500 once, and then --

3 THE COURT: Let's go on.

4 MR. LAWYER: May I have this marked as Government
5 exhibit 91 for identification?

6 THE COURT: All right.

xxx 7 (Government exhibit 91 marked for identification.)

8 CROSS-EXAMINATION

9 BY MR. LAWYER:

10 MR. LAWYER: May I ask your Honor for a few
11 minutes while the witness composes herself? I really can't
12 question her like this.

13 THE WITNESS: Can I ask you for a favor? May I
14 have a glass of water?

15 THE COURT: Of course. All right, Mr. Clerk.

16 (Pause.)

17 THE COURT: Are you able to go on?

18 THE WITNESS: Yes, I'll be able to.

19 Q Mrs. Wolf, I show you Government exhibit 91 for
20 identification. Is this your son's signature, Ma'am?

21 A Yes, sir.

22 Q Mrs. Wolf, are you dependent on your son for
23 support?

24 A No.

25 Q Have you ever been?

1 mceg 31 R.G.Wolf-cross

2 A No. He gave me some money when I ran short.

3 Q When was that, Ma'am?

4 A I don't recall what years, but between 1959 and
5 1968 he helped me out once or twice.

6 Q This was just when you needed a few dollars from
7 time to time?

8 A A couple of hundred dollars when I needed it.

9 Q Would you read paragraph 9 on Government exhibit
10 91? I will read it to prefer it that way.

11 MR. APFLEMAN: Why don't you read it.

12 THE WITNESS: Would you, please?

13 MR. LAWYER: "Despite the fact that my mother was
14 left certain property by my late father this property is not
15 income producing and that the income that she derives from
16 his estate is practically nil. It is therefore necessary
17 for me to help support her. My wife claims that I am giving
18 my mother \$125 a week."

19 MR. APFLEMAN: Your Honor, I object.

20 THE COURT: Overruled.

21 Q I will begin that sentence again.

22 "My wife claims that I am giving my mother \$125
23 a week for the purpose of showing the court that I have
24 increased expenses and obligations. I wish to point out that
25 I started giving this money to my mother long before the

1 mecg 32 R.G.Wolf-cross/redirect
2 present action was started and before I had any knowledge that
3 these proceedings were even contemplated."

4 But you would testify that you son did not have
5 to support you on a regular \$125 a week basis; is that
6 correct?

7 A My son helped me out whenever I needed it. He
8 helped me out in a lot of ways.

9 Q Since 1959?

10 A Yes.

11 Q Whenever you needed a few dollars?

12 A Whenever I needed a few dollars, and I gave him
13 some.

14 MR. LAWYER: No more questions.

15 THE WITNESS: Your Honor, may I say something?

16 THE COURT: No, Mrs. Wolf. I'm sorry.

17 Any questions?

18 REDIRECT EXAMINATION

19 BY MR. AFFLEMAN:

20 Q Did your son give you money at the time that your
21 husband died?

22 A Yes.

23 Q Was this money necessary due to the fact that the
24 estate had tied up all the assets?

25 MR. LAWYER: Objection.

1 mceg 33 R.G.Wolf-redirect

2 A Yes.

3 THE COURT: Sustained.

4 MR. LAWYER: May the answer be stricken?

5 THE COURT: Yes.

6 MR. APFLEMAN: No further questions.

7 THE COURT: Anything else?

8 MR. LAWYER: Nothing else.

9 THE COURT: Next witness.

10 MR. APFLEMAN: I related that I didn't expect
11 to get this far. This is the last witness I have available.

12 THE COURT: All right, then.

13 Mr. Foreman, ladies and gentlemen, apparently
14 there are no other witnesses available at the moment. We
15 will resume on Monday morning at 9:30. Please keep in mind
16 my admonition not to discuss this case among yourselves or
17 with anybody else. I believe we will complete this case on
18 Monday or Tuesday. Thank you very much. You may retire.

19 (The jury left the courtroom.)

89 20 THE COURT: Now, how long will we be on Monday?

21 MR. APFLEMAN: Your Honor, it can be a short
22 period of time or it can be an extended period of time,
23 according to whether Dr. Wolf chooses to take the stand.

24 THE COURT: We have to decide this pretty
25 quickly. What is the question that you want me to rule on

1 mceg 34

2 that you talked to me about at the side bar?

3 MR. APPLEMAN: There is evidence which was
4 submitted at the doctor's matrimonial trials and I wish to
5 have this evidence omitted or barred from this trial due to
6 the fact that it has nothing at all to do with his income
7 tax evasion.

8 THE COURT: I don't know it. What is it that we
9 are talking about? Do you have the transcript?

10 MR. APPLEMAN: No, your Honor.

11 THE COURT: I can't just rule in a vacuum. I
12 don't know whether it will be admissible or not.

13 MR. APPLEMAN: Do you have the transcript, Mr.
14 Lawyer?

15 MR. LAWYER: Not yet. I will have it.

16 THE COURT: Are you just asking me to say that
17 they can't use the testimony of the doctor given at his
18 divorce trial?

19 MR. APPLEMAN: That is correct.

20 THE COURT: I can't make a ruling of that sort.
21 I don't know. It depends on what he testifies to here on
22 direct examination.

23 MR. LAWYER: He testified at great length about
24 his income in a matrimonial proceeding.

25 THE COURT: I would think that would be highly

1 mceg 35

2 relevant. I just can't rule on guesswork. I don't know
3 what he is going to testify to on direct examination. I
4 don't think I can make any such ruling. But if he testified
5 at his matrimonial action about anything connected with his
6 income in the years in question here I should think it would
7 be highly relevant.

8 MR. APPLEMAN: Thank you, your Honor.

9 THE COURT: Well, will we finish Monday morning?

10 MR. APPLEMAN: Your Honor, if the defendant does
11 not take the stand we will definitely finish Monday morning.
12 If the defendant does take the stand, then it is a matter of
13 the cross-examination and the depth it will go into.

14 THE COURT: All right, but we must be prepared to
15 go ahead on Monday morning. I can't have any more delay.

16 MR. APPLEMAN: No, your Honor, on Monday morning
17 we will have all the witnesses present and we will be pre-
18 pared to finish it Monday morning.

19 THE COURT: All right, 9:30 Monday morning.

20 (Trial adjourned until 9:30 A. M. on November
21 26, 1973.)

22 - - -

1 mceg 36

2 UNITED STATES OF AMERICA,

3 vs.

73 Cr. 486

4 ROBERT L. WOLF

6 November 26, 1973
7 9:30 A. M.

8 (Trial resumed.)

9 MR. APPLEMAN: Your Honor, we think the court
10 should be put on notice with regard to one witness we do
11 have. This witness is a Mr. Slade, a patient of Dr. Wolf.
12 Mr. Slade will testify to the effect that he did receive a
13 subpoena from the Government; that subsequently a Government
14 agent did visit him and told him not to worry and just state
15 what the U.S. Attorney tells him to state. That is going to
16 be his testimony and this is what I am offering him as a
17 witness for.

18 MR. LAWYER: I would like an offer of proof as
19 to what else -- who is the U. S. Attorney?

20 MR. APPLEMAN: He just said that he received --
21 he is going to bring the subpoena that he received in the
22 mail. Subsequently he is going to state that an agent came
23 to visit him and told him to appear in court and just state
24 what the U.S. Attorney "tells you to state."

25 MR. LAWYER: Appear in court when?

1 mecg 37

2 THE COURT: At this trial?

3 MR. APPLEMAN: At this trial. He is one of the
4 patients listed on your schedule whom you did not call.

5 MR. LAWYER: Did you talk to him?

6 MR. APPLEMAN: Your agent spoke to him.

7 MR. LAWYER: Who is my agent?

8 MR. APPLEMAN: He has the letter. He has a sub-
9 poena he received in the mail and he is going to have a
10 subpoena that he got in person.

11 THE COURT: Assuming the 100 percent truth of
12 what the witness will testify, I don't know how it has a
13 thing in the world to do about Dr. Wolf being guilty. This
14 agent may be guilty of something. If so, I would report him
15 to the United States Attorney's office.

16 MR. APPLEMAN: It shows the extent the United
17 States Attorney's office or Intelligence has gone to badger
18 witnesses.

19 THE COURT: So what? He didn't appear. Certainly
20 his testimony didn't hurt you any.

21 MR. APPLEMAN: No, except for one thing, how do
22 I know, the other witnesses were --

23 THE COURT: Why didn't you ask them? You could
24 ask them. I didn't restrict cross-examination.

25 I won't allow that testimony. It is relevant.

1 mecg 38

2 MR. APPLEMAN: That is why I wished to bring it
3 to your Honor's attention.

4 THE COURT: I appreciate that. I just think it
5 is irrelevant.

6 MR. LAWYER: I am advised by my colleague, Mr.
7 Weisberg, and it is also my understanding that the U. S.
8 Marshall's served our subpoena almost in every case. I sent
9 an IRS man, for instance, to the IRS.

10 THE COURT: I am prepared to assume that some
11 IRS agent did interview or talk to him in preparation for
12 his testimony. Trying the prosecutor or trying the IRS
13 agents isn't going to get us anywhere.

14 MR. APPLEMAN: I believe that you asked for some
15 additional comments with regard to bank deposits. I have
16 got it in handwriting. I ask the court's pardon for not
17 having it typed.

18 THE COURT: That will be all right. I will see
19 if I can't work it into my charge.

20 Are we all set?

21 MR. APPLEMAN: Yes, your Honor.

22 THE COURT: Then let's get the jury in.

23 (Jury present.)

24 THE COURT: All right, Mr. Appleman.

25 MR. APPLEMAN: My first witness will be Mr. Wen.

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Wen-direct

2 P E T E R L. W E N, called as a witness in behalf of
3 the Government, having been only sworn, testified
4 as follows:

5 DIRECT EXAMINATION

6 BY MR. APPLEMAN:

7 Q Mr. Wen, what is your occupation?

8 A I'm an accountant.

9 Q Can you please speak louder?

10 A Accountant.

11 Q By whom are you employed?

12 A By the Mount Sinai Hospital and Mount Sinai
13 School of Medicine.

14 Q In what position are you employed by the Mount
15 Sinai School of Medicine?

16 A I'm the associate director of Finance.

17 Q In connection with that position did you come in
18 contact with a person called Dr. Robert L. Wolf?

19 A Yes, I did.

20 Q Is Dr. Wolf here in the courtroom?

21 A Yes, he is sitting over there.

22 MR. APPLEMAN: Pointing to --

23 THE COURT: Yes, I think the record can show
24 that the identification is made. All right.

25 Q In your capacity as director of Mount Sinai did

1 mceg 40 Wen-direct

2 it come about that you advanced monies to Dr. Wolf for Mount
3 Sinai Hospital?

4 A Well, we do receive a number of grants from
5 various --

6 MR. LAWYER: Objection. That is not responsive.

7 THE COURT: Did you make loans to Dr. Wolf?

8 MR. AFFLEMAN: Not loans. Monies were advanced,
9 monies were given to Dr. Wolf.

10 THE COURT: Did you advance money to Dr. Wolf?

11 THE WITNESS: Yes, an advance --

12 Q What were these advances for?

13 A Usually for travel purposes.

14 Q Usually for travel purposes.

15 In what capacities did Dr. Wolf travel with regard
16 to Mount Sinai Hospital?

17 A In the capacity of a research investigator to go
18 out either for consultation or present a paper or consult with
19 other people about his project or attend a general scientific
20 meeting. This is the areas usually he travels for.

21 Q Were Dr. Wolf's travels during the period 1966
22 to 1969 extensive?

23 A Yes, he did travel quite a bit, yes.

24 Q Do you have with you records pertaining to the
25 amount of monies given to Dr. Wolf for these travel expenses?

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Wen-direct

2 A Yes, I do.

3 MR. APPLEMAN: I wish to have this marked as a
4 defendant's exhibit for identification.

xxx

5 (Defendant's exhibit O marked for identification.)

6 Q Sir, I wish to show you a document labeled
7 "Mount Sinai Hospital request for check funds."
8

9 MR. LAWYER: Can he just identify the document,
10 not start reading it?

11 THE COURT: All right.

12 Q Will you please state what this is?

13 A This is a complete set of the travel vouchers.
14 We usually require a travel request before travel is made
15 and then after the return from the trip Dr. Wolf will
16 submit a travel voucher. At this point we will reimburse
17 for the difference if we did not advance any money in advance,
18 so that therefore we have these for reimbursement.

19 THE COURT: These are all the travel requests
20 and the travel vouchers submitted by Dr. Wolf?

21 THE WITNESS: Yes.

22 THE COURT: All right.

23 Q On January 3, 1966 what amount was paid to Dr.
24 Wolf for travel?

25 MR. LAWYER: Objection.

THE COURT: Yes, the document speaks for itself.

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Wen-direct

MR. APPLEMAN: I wish to place this in evidence.

THE COURT: All right, show it to Mr. Lawyer.

MR. APPLEMAN: With Mr. Lawyer's concurrence, I will make photocopies of this in the afternoon and return the original documents to Mr. Wen, if that is okay with Mr. Lawyer.

MR. LAWYER: I don't object to doing that. I do object to the proffered exhibit in that it pertains to travel in 1965.

MR. APPLEMAN: It was paid in 1966. The top sheet shows the payment was made in January of 1966.

THE COURT: I assume, Mr. Wen, that that is correct, since this request for check funds is dated January of 1966. I assume that you reimbursed this amount in 1966?

THE WITNESS: Yes, that is right.

THE COURT: I will admit it.

MR. LAWYER: In that event, I withdraw my objection.

THE COURT: All right.

(Defendant's exhibit O received in evidence.)

Q Therefore, on January 3, 1966 the defendant received \$305.74 for travel to Austin, Texas; is that correct?

A That is correct, yes.

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Wen-direct

2 THE COURT: Does this exhibit only relate to
3 one payment?

4 THE WITNESS: One trip.

5 THE COURT: One trip?

6 THE WITNESS: Right.

7 THE COURT: But I am confused. I thought you
8 said a moment ago that this contains all of his travel --

9 MR. APPLEMAN: I have many more vouchers, your
10 Honor.

11 THE COURT: All right.

12 MR. APPLEMAN: Each individual voucher pertains
13 to an individual trip.

14 THE COURT: All right.

xxx 15 (Defendant's exhibit P marked for identification.)

16 Q Sir, I wish to show you --

17 THE COURT: Are there very many of these?

18 MR. APPLEMAN: Yes, your Honor.

19 THE COURT: Why don't we do them all at one
20 time? Wouldn't that be easier?

21 MR. APPLEMAN: I have got to do it by year, your
22 Honor, 1966 and --

23 THE COURT: All right, let's do it by year.

24 MR. APPLEMAN: Therefore Defendant's exhibit P
25 for identification would contain 10 requests for travel

1 mccg 44

Wen-direct

2 funds from Mount Sinai Hospital for the year 1966.

3 Q I wish to show you Defendant's exhibit P for
4 identification. Will you please look at each one of these
5 vouchers and state how much money was advanced to Dr. Wolf?

6 THE COURT: We can read that from the face of
7 the voucher, I think.

8 Mr. Wen, since you say you brought all of your
9 vouchers, travel requests and travel vouchers of Dr. Wolf,
10 then this must be all there is for the year 1966; is that
11 right?

12 THE WITNESS: That is correct.

13 THE COURT: Do you want to offer them?

14 MR. APPLEMAN: Yes, your Honor.

15 THE COURT: All right, show them to Mr. Lawyer.

16 MR. LAWYER: Can I have a voir dire on one of
17 these?

18 THE COURT: Yes.

19 VOIR DIRE

20 BY MR. LAWYER:

21 Q Mr. Wen, look at defendant's exhibit P for iden-
22 tification, this particular one. Is this 1/21/65 or '66?

23 A That is 1966. Apparently the copy didn't come
24 out. We use the check number and the date.

25 Q It is possible that the date was just the wrong

1 mceg 45 Wen-direct

2 year because of the turn of the year?

3 A Yes.

4 MR. LAWYER: I have no objection, your Honor.

5 THE COURT: All right, it will be received.

6 (Defendant's exhibit P received in evidence.)

7 BY MR. APPLEMAN:

8 Q Sir, looking at Defendant's exhibit P in evidence,
9 is that all the travel funds advanced to Dr. Wolf for the
10 year 1966 by Mount Sinai Hospital?

11 A I would say about pretty much the case. I did
12 not check every individual one to the record. However, this
13 is what I have in the file.

14 Q In other words, there could have been more?

15 A There could have been more.

16 MR. LAWYER: I object.

17 THE COURT: Yes, that is speculative.

18 You didn't find any others, I take it?

19 THE WITNESS: It is in the file, but sometimes
20 they might file in the wrong place and I cannot 100 percent
21 guarantee.

22 THE COURT: No, but if the records of the
23 hospital are properly kept we've got them all?

24 THE WITNESS: Yes.

25 THE COURT: All right.

xxx

1 mccg 46

Wen-direct

2 Q Mr. Wen, will you give a fast total of the
3 amount of funds received by Dr. Wolf in 1966?

4 THE COURT: Can't we add it on an adding machine?
5 Has it already been done?

6 MR. APPLEMAN: No, your Honor.

7 THE COURT: Oh, well, we can do that.

8 Q Sir, I wish to show you seven vouchers for expense
9 reimbursements requested by Dr. Wolf.

10 MR. APPLEMAN: I ask to have this marked
11 exhibit Q.

12 (Defendant's exhibit Q marked for identification.)

13 Q Can you please examine these vouchers and state
14 whether these monies were advanced to Dr. Wolf by Mount
15 Sinai Hospital for travel?

16 THE COURT: If they are like the others --

17 THE WITNESS: Yes.

18 THE COURT: -- they weren't advanced, they were
19 reimbursed.

20 THE WITNESS: Yes.

21 THE COURT: He had spent the money and you had
22 reimbursed him?

23 THE WITNESS: That is right.

24 MR. LAWYER: Can I have a voir, dire, your Honor?

25 THE COURT: Yes.

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Wen-direct

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VOIR DIRE

BY MR. LAWYER:

Q Mr. Wen, sir, this document is dated December 13, 1968, I understand you to be referring to 1967 documents.

A I'm sorry. This got mixed up. This is 1968.

Q It does refer to 1968?

A Yes.

THE COURT: All right, why don't we just take it out and then exhibit Q for identification will consist of six travel vouchers.

Isn't that right, Mr. Appleman?

MR. APPLEMAN: Yes, your Honor.

THE COURT: All right.

MR. LAWYER: There are still 7. I think there were originally 8.

THE COURT: Then it must be that when the exhibit was first marked it consisted of 8 travel vouchers. One having been removed it now consists of 7.

All right, without objection, it will be received.

(Defendant's exhibit Q received in evidence.)

BY MR. APPLEMAN:

Q Sir, I wish to show you an expense reimbursement request from Dr. Wolf for Mount Sinai Hospital.

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Wen-direct

MR. APPLEMAN: Please mark this as Defendant's exhibit R for identification.

xxx (Defendant's exhibit R marked for identification.)

Q This indicated one voucher requesting \$390.53.

A That is correct.

THE COURT: What year is that?

MR. APPLEMAN: That is the one for 1968, your Honor.

THE COURT: Then there is one voucher for the year 1968?

MR. APPLEMAN: That is correct, your Honor.

MR. LAWYER: Mr. Wen, the dates on these records, sir, is that the date of a check?

THE WITNESS: Yes, that is the date of the check.

MR. LAWYER: No objection.

THE COURT: Mark it.

xxx (Defendant's exhibit R received in evidence.)

Q I wish to show you three vouchers for the year 1969, expense reimbursements to Dr. Robert Wolf from Mount Sinai Hospital.

xxx (Defendant's exhibit S marked for identification.)

Q Would you look at these and see if these are the records which you submitted to me.

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Wen-direct

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A Yes.

MR. LAWYER: No objection.

THE COURT: All right, mark them.

xxx

(Defendant's exhibit S marked in evidence.)

MR. APPELMAN: Please have the record show that I am returning two vouchers for the year 1970 to Mr. Wen which he submitted to me.

92

Q Mr. Wen, were these expense reimbursements reflected on the doctor's W-2 received from the hospital?

A It will not reflect because this is not for salaries earned. This is only for reimbursement of expenses.

Q Would a 1099 be necessary with regard to these payments made to Dr. Wolf for expense reimbursements?

A We did not issue a 1099 on this either because this is purely for reimbursment of expenses.

Q Based on these documents that you have submitted to me, would this reflect an extensive travel itinerary for the years 1966 to 1969 for Dr. Wolf?

MR. LAWYER: Objection.

THE COURT: Sustained. You can make that argument to the jury.

Q Sir, if I showed you retained copies of travel vouchers from Dr. Wolf to the Mount Sinai Hospital which are not reflected on those items you submitted to me, would that

1 mceg 50

Wen-direct/cross

2 refresh your recollection as to additional amounts received
3 by Dr. Wolf for Mount Sinai Hospital?

4 MR. LAWYER: Objection.

5 MR. APPLEMAN: I have no further questions,
6 your Honor.

7 THE COURT: All right, Mr. Lawyer.

8 CROSS-EXAMINATION

9 BY MR. LAWYER:

10 Q Mr. Wen, what kind of checks would be issued
11 for Dr. Wolf for these reimbursements? Physically, what
12 would the check look like? Would it be a Mount Sinai check?

13 A Yes.

14 Q Where are the cancelled checks?

15 A The cancelled checks are in the hospital some
16 place.

17 MR. LAWYER: I ask that those be produced.

18 THE COURT: How much trouble is there to get
19 them, Mr. Wen?

20 THE WITNESS: We will have some problem. I don't
21 know for sure exactly at this point whether I can actually
22 get all the checks. Some checks have been microfilmed after-
23 wards and some checks haven't.

24 THE COURT: All right.

25 Q When you indicated that you were only able to

1 mceg 51 Wen-cross

2 find one travel voucher for 1966, that means one trip; is
3 that right?

4 A That constitutes one trip.

5 MR. LAWYER: No further questions.

6 THE COURT: I will have to ask you to see what
7 you can do about finding the cancelled checks. We only want
8 checks relating to these expense vouchers.

9 THE WITNESS: Yes.

10 THE COURT: And that means 1966, 1967, 1968,
11 1969.

12 Now, do you have somebody who is at the hospital
13 now that you could reach on the telephone?

14 THE WITNESS: It is not possible to produce it at
15 this particular moment because some of the records have
16 transferred to storage, some have been microfilmed. If I
17 have the document back, it will help, because on every one
18 of them we have a number indicated on the bottom portion of
19 it so we know the number and it is just a matter of assigning
20 someone to look through the record and find the checks.

21 THE COURT: What do you suggest we do, Mr. Lawyer?
22 I have got to go on with the trial.

23 MR. LAWYER: I would ask that they be produced,
24 whichever ones they can find. I think it is important to see
25 what bank stamp is on what check.

1 mceg 52

Wen

2 THE COURT: All right. Mr. Appleman, can you
3 lend Mr. Wend the exhibits marked in evidence?

4 MR. APPLEMAN: Yes, your Honor.

5 THE COURT: All right. Could you report back
6 early this afternoon?

7 THE WITNESS: I doubt I could find something.
8 It is quite a way back and there have been no activities --

9 THE COURT: Do you want him to come back early
10 this afternoon with as many as he can find?

11 MR. LAWYER: Yes.

12 THE COURT: Could you see how many you could find
13 between now and two o'clock and see if you can be here at
14 two o'clock?

15 THE WITNESS: What I can do is call the office
16 first. Normally the internal audit gets the checks back and
17 once we issue them we don't see them any more. The internal
18 audit will have the records of the checks which have been
19 microfilmed. I will speak to them, to see how much dif-
20 ficulty would it be to find the checks for 1967, 1968, et
21 cetera.

22 THE COURT: I don't suppose, Mr. Lawyer, it makes
23 any difference to you whether Mr. Wen brings the checks or
24 anybody else does.

25 MR. LAWYER: Just someone can look at the checks

1 mceg 53 Wen

2 and testify to them.

3 THE WITNESS: I would appreciate that.

4 THE COURT: But have somebody here with as many
5 checks as possible by two o'clock. You can save time by
6 telephoning. The clerk will allow you to use the phone in
7 my robing room. You may send somebody else as long as the
8 person who comes down can identify the checks.

9 MR. APPLEMAN: We will need these original copies
10 back, which I will photocopy and then I will mail you back
11 these original documents.

12 THE COURT: You can make a list of the check
13 numbers that we need and then you don't have to take these
14 papers with you.

15 THE WITNESS: Yes, that is what I plan to do.

16 THE COURT: Mr. Clerk, will you give Mr. Wen
17 plenty of paper and pencils and let him sit in my robing
18 room.

19 All right, the clerk will show you into my robing
20 room where you can be comfortable.

21 MR. APPLEMAN: Mr. Wen, I have some additional
22 documents which might refresh -- which might, in connection
23 with your records kept at Mount Sinai --

24 MR. LAWYER: What is happening, your Honor?

25 MR. APPLEMAN: If he is looking for checks, we

1 mceg 54

Wen

2 have additional documents here which indicate that additional
3 checks were received by Dr. Wolf. I think Dr. Wolf should
4 be given the opportunity of having these checks located, if
5 possible, in addition to these other checks.

6 MR. LAWYER: Any checks he can find.

7 THE WITNESS: The checks are not indicated. This
8 will make it very difficult. You have the number here.

9 MR. APPLEMAN: We have some numbers.

10 MR. LAWYER: This is in effect an off the record
11 conversation.

12 THE COURT: But it ought to be made part of the
13 record.

14 I am just trying to finish the trial. That is
15 all I am doing. I don't want it held up for days while
16 Mount Sinai is trying to find records.

17 MR. LAWYER: If he wants to ask a question properly,
18 I don't care.

19 THE COURT: I take it you want any checks that
20 he can find in the years that we mentioned.

21 MR. APPLEMAN: Only for the years 1966 through
22 1969, no other year.

23 THE COURT: I will let him stop and get on with
24 it.

25 MR. APPLEMAN: May I please approach the bench?

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Wen/ Wolf-direct

(At the side bar.)

MR. APPLEMAN: I wish to make this a part of the record: I will relate the fact that Dr. Wolf is going to take the witness stand totally disregarding my advice. I have specifically advised him not to take the stand, but he insists on taking the stand and I wish this a part of the record. I am going to relate that to Dr. Wolf.

(In open court.)

THE COURT: All right, next witness.

MR. APPLEMAN: Your Honor, I call the defendant, Dr. Robert L. Wolf.

THE COURT: All right.

- - -

ROBERT LAWRENCE WOLF, the defendant, called as a witness in his own behalf, after having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. APPLEMAN:

Q Dr. Wolf, where do you reside?

A My address is in Danbury, Connecticut.

Q Do you have an office in the City of New York?

A I do.

Q At what address is that office located?

A 20 East 74th Street.

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2 Q Now, how long have you been at that office?

3 A I have been at that office for approximately
4 14 years.

5 Q Can you please state your educational background?

6 A I received a Bachelor of Science degree in
7 medicine from Duke University School of Medicine in Durham,
8 North Carolina, in 1950.

9 In 1952 I received an MD degree from Duke
10 University School of Medicine also in Durham, North Carolina.
11 That was followed by a one-year internship at the Mount
12 Sinai Hospital, New York City. After the one-year intern-
13 ship I was the chief resident in pathology again at the
14 Mount Sinai Hospital in the Mount Sinai School of Medicine,
15 New York City.

16 If, with your permission, I might refer to some
17 notes which I have made which outlines the answers to this
18 question, I think I could summarize it quickly.

19 Q Right. Can you, looking at that, refresh your
20 recollection? Can you please summarize your educational
21 background specifically stating the date you were admitted
22 to practice in New York State and any other states in which
23 you are licensed to practice?

24 A After my chief residency in pathology between
25 1953 and 1954 I entered the navy and was the chief of

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2 laboratories at the United States Naval Hospital, Bainbridge,
3 Maryland. In 1954 I received a license to practice medicine
4 in Connecticut. In 1966 I received a license to practice
5 medicine and surgery in California.

6 Between 1956 and 1957 I was assistant resident
7 in medicine at the Mount Sinai Hospital and the Mount Sinai
8 Medical School, New York City.

9 In 1957 I received a license to practice surgery
10 and medicine in the State of Florida.

11 Between 1957 and 1958 I was a chief resident in
12 medicine at the Mount Sinai Hospital and the Mount Sinai
13 School of Medicine, New York City.

14 Between 1957 and 1958 I completed at Columbia
15 University a course in Clinical Radioactive Isotopes.

16 In 1958 and 1959 I was a research fellow of the
17 Arthritic and Rheumatism Foundation and worked both at the
18 Mount Sinai Hospital of Medicine and the Bronx Veterans
19 Hospital.

20 Between 1958 and 1961 I was a research fellow in
21 medicine at the Mount Sinai Hospital School of Medicine and
22 the Mount Sinai Hospital.

23 Between 1958 and 1962 I was clinical assistant
24 in medicine at the Mount Sinai School of Medicine, New York
25 City.

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In 1960, up until the present time, I was a research assistant in medicine at the Mount Sinai School of Medicine and Hospital, New York City, and in 1962 through 1965 I was a senior clinical assistant in medicine at the Mount Sinai School of Medicine and Hospital, New York City.

In 1965 I was appointed Assistant Attending Physician in Medicine at the Mount Sinai School of Medicine and Hospital, New York City.

In 1966 I became a Diplomat of the American Board of Internal Medicine.

In 1966 I became an assistant clinical professor in medicine at the Mount Sinai Hospital School of Medicine, New York City.

In 1967 I was elected to a fellowship in the American College of Physicians. In 1967 I achieved a specialist rating for heart disease from the State of New York, Workmen's Compensation Board.

THE COURT: Doctor, is there very much else, because we are not really qualifying you as an expert witness.

THE WITNESS: Not too much more.

MR. APPLEMAN: Your Honor, we have some competition from the subway. The jury cannot hear him. I can just make out what he is saying. I was wondering if the doctor would

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2 please speak louder.

3 THE COURT: Go ahead, Doctor.

4 A In 1967 I became a member of the American
5 College of Chest Physicians. Again in 1967 I was a member
6 of the committee on hypertension of the American College of
7 Chest Physicians.

8 In 1973 I was the official United States Delegate
9 from the State Department and Atomic Energy Commission to
10 an international symposium on radioactive isotopes.

11 Furthermore, in brief, I have been elected to
12 various medical organizations including the Medical Society
13 of the State of New York and of the County of New York,
14 the American Heart Association, the New York Heart Associa-
15 tion, the American Federation for Clinical Research, the
16 American Nuclear Society, the New York Academy of Science,
17 the Council for High Blood Pressure Research, the Council
18 for Circulation, the Society of Experimental Biology and
19 Medicine, the American Physiological Society, the American
20 Association for the Advancement of Science, The Colombian
21 Heart Society -- that is of the County of Colombia, South
22 America -- the American Association for the Advancement of
23 Science.

24 MR. LAWYER: I am going to object to any more.

25 THE COURT: Doctor, don't you think we have had

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2 enough? I mean, nobody is disputing your qualifications.

3 THE WITNESS: All right.

4 Q Dr. Wolf, as a result of all these achievements
5 were you asked to either chairman or lecture various dis-
6 cussions or lectures regarding your expertise?

7 MR. LAWYER: Objection.

8 THE COURT: Is this in connection with travel?

9 MR. APFLEMAN: That is right.

10 THE COURT: I will permit it. I don't know what
11 it is going to lead to.

12 A Yes, I have been.

13 THE COURT: And that involved extensive travel,
14 Doctor?

15 THE WITNESS: Yes, sir.

16 THE COURT: Let's go on. All right.

17 Q Was the expenses with regard to travel paid by
18 yourself or were you reimbursed for this travel?

19 A Generally speaking I would spend the money myself
20 and then be reimbursed.

21 Q Who would reimburse you for these expenses?

22 A Most of the expense for which I was reimbursed
23 came from various grants and funds at the Mount Sinai School
24 of Medicine.

25 Q Would there be any other hospital or companies

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2 that would reimburse you for travel expenses?

3 A There were a wide variety of other organizations
4 which might reimburse such as pharmaceutical companies, out-
5 side medical societies or hospitals or universities, and so
6 on.

7 Q Can you relate the names of these companies or
8 the hospitals that reimbursed you for these expenses?

9 A I can remember a few of them offhand and I might
10 recollect more by searching my notes.

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11 I have been reimbursed by the Syntex Pharmaceu-
12 tical Company, by the Ciba Pharmaceutical Company, by the
13 Searles Pharmaceutical Company, by the Medical Society
14 and University of Sidney, Australia, by the Medical Society
15 of the University of Melbourne Medical School, Melbourne,
16 Australia, by the Medical School at the University in
17 Nairobi, Kenya, by the various international pharmaceutical
18 societies such as the First To Fourth International Pharmaceu-
19 tical Society, by various state and local medical societies
20 and by various state and local hospitals.

21 Q In 1966 did you attend the following discussions
22 or lectures: One in Sao Paulo, Brazil --

23 MR. LAWYER: Objection.

24 THE COURT: Mr. Appleman, what has this got to
25 do with it? Is it your contention that he was distracted

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by traveling?

MR. APPLEMAN: No, your Honor. A lot of these unexplained deposits are from travel reimbursements that he received and I want to show the extent of the travel that he did during this period of time. I am only limiting myself from 1966 to 1969, your Honor..

THE COURT: Can we get to the specific amounts?

MR. APPLEMAN: The problem that we have there is that we have a lack of records, but we are able to get to the places he visited due to the fact that everytime the doctor went some place there was a curriculum vitae that was made by the doctor relating --

MR. LAWYER: We are getting testimony here.

THE COURT: I know. Mr. Appleman, we are not interested in the purpose of the trip, only where did he go.

MR. APPLEMAN: I am going down the list. I want to get to 1966, 1967, 1968 and 1969 in one lump sum.

THE COURT: Not what he did, just where he went.

Q In 1966 did you go to Sao Paulo, Brazil?

A Yes, I went --

Q Let me finish everything: Bogota, Columbia; Santiago, Chile, Buenos Aires, Argentina? Did you go to those places in 1966?

A Yes, I did.

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2 Q In 1967 did you attend the various lectures in
3 Madrid, Spain; Seville, Spain; and other lectures in Long
4 Island City and the Mount Sinai Hospital? That is for 1968.

5 THE COURT: I thought it was 1967.

6 MR. APPLEMAN: I'm sorry, I lost myself. In
7 1967 we just have -- I'm sorry, your Honor. This is 1968.

8 Q In 1968 did you go to Madrid, Spain and Seville,
9 Spain?

10 A Yes, sir.

11 Q In 1969, did you attend various lectures in
12 Connecticut, Pennsylvania, Basle, Switzerland, the University
13 of East Africa in Nairobi, Sidney, Australia, Dallas, Texas,
14 Chicago, Illinois and Philadelphia, Pennsylvania?

15 A Yes, I did.

16 Q Were you reimbursed for all the expenses on all
17 those trips?

18 A Yes, I was.

19 Q Are you acquainted with a Mr. Edelstein?

20 A Yes, I am.

21 Q Will you please tell the court how you met Mr.
22 Edelstein?

23 A Mr. Edelstein was my accountant from 1966 on-
24 ward.

25 Q Will you state how you met him.

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2 A He was introduced to me, I believe, by a relative
3 of his. I believe it was his brother.

4 Q How did you meet his brother?

5 MR. LAWYER: Objection.

6 THE COURT: Yes, I think that is irrelevant.

7 Q Was his brother a patient of yours?

8 A Yes.

9 Q Did Mr. Edelstein prepare your income tax return
10 for the year 1965?

11 A No, he did not.

12 Q Who prepared your income tax return for 1965?

13 MR. LAWYER: Objection.

14 THE COURT: I will permit it.

15 A My income tax in 1965, the return was prepared
16 by Mr. Paul Young, who was a certified accountant.

17 Q Was there any specific reason why Mr. Young
18 could not prepare your 1966 return?

19 MR. LAWYER: Objection.

20 THE COURT: I will permit it.

21 A Yes, there was a reason.

22 Q Will you please tell the court and the jury what
23 that reason was?

24 A Mr. Young during the years that he prepared my
25 return was a part time associate of a university in teaching

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2 and around 1966 or late 1965 he decided to devote his full
3 energies to teaching accounting at the University and there-
4 fore gave up his small private practice.

5 Q Was your income tax return for 1965 audited?

6 A Yes, it was.'

7 Q Did anyone represent you in connection with that
8 audit?

9 A I believe Mr. Young represented me.

10 Q What was the final result of that audit?

11 MR. LAWYER: I object.

12 THE COURT: Sustained.

13 Q Did the Internal Revenue Service make a decision
14 as to the accuracy of your return that was filed for 1965?

15 MR. LAWYER: Objection.

16 THE COURT: Sustained.

17 Q During this period of time, what was the extent
18 of your private practice?

19 A During this interval of time my private practice
20 occupied approximately a third of my working day. The re-
21 mainder of my daytime work was related to research and teach-
22 ing and various clinical responsibilities at the Mount Sinai
23 School of Medicine.

24 MR. LAWYER: Point of information, this period of
25 time physical to what?

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2 MR. APFLEMAN: Only 1966 to 1969.

3 THE COURT: It is for the four taxable years.
4 involved here?

5 MR. APFLEMAN: I will not go into any other
6 years.

7 THE COURT: All right.

8 Q Did there come a time when you called Mr.
9 Edelstein or Mr. Edelstein called you with regard to the
10 preparation of your 1966 return?

11 A Yes, there did come a time.

12 Q Can you please state who called who?

13 A Approximately four or five weeks before April 15,
14 1967 Mr. Edelstein called me on the telephone and told me
15 that he was going to send me certain work sheets which he
16 wanted in order to prepare my income tax.

17 Q Did he tell you what was to be placed on these
18 work sheets?

19 A He told me what was to be placed on the work
20 sheets and he also wrote on top of the work sheets, when I
21 finally received them, the data that he requested.

22 Q Were these work sheets delivered to you by hand
23 or mail?

24 A I received the work sheets by mail.

25 Q Sir, I wish to show you government exhibit 11A in

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2 evidence. Will you please look at it and see if that is
3 the work sheets that was sent to you by Mr. Edelstein?

4 A Yes, this proves to be the work sheets, although
5 it is not the entire work sheets.

6 Q How do you know that it is not the entire work
7 sheet?

8 A Because on this work sheet I see no listing of
9 check deposits which Mr. Edelstein requested each year.

10 Q Did Mr. Edelstein in 1966 tell you how to fill
11 out these work sheets?

12 A Yes, he did.

13 Q What directions did he give you?

14 A The directions that he gave were that I should
15 list each and every expenditure under the appropriate column
16 head which he labeled in his own hand on the work sheet from
17 my records. He also instructed me to list my checking de-
18 posits in the same fashion and furthermore he said that I
19 should at the same time that I return this enclose my W-2
20 forms from the Mount Sinai Hospital and all of my 1099 forms,
21 and he also told me to record my professional income for
22 the year in question, in this case 1966, which did not re-
23 flect the W-2's and 1099's.

95 24 Q Did he relate to you how to distinguish between
25 income and expense items?

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A No, he didn't.

Those coming in and expenditure
items for those being paid out; isn't that it?

THE WITNESS: Yes, I believe that is so, but
actually he did not explain it to me. Regarding the initial
papers received in 1967, did they contain any written
instructions whatsoever?

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2 A No, he didn't.

3 THE COURT: ~~those~~ coming in and expenditure Income
4 items were /those being paid out; isn't that it?

5 THE WITNESS: Yes, I believe that is so, but
6 actually he did not explain it to me.

7 Q Regarding the initial papers received in 1967,
8 did they contain any written instructions whatsoever?

9 A No, they did not.

10 Q Did you yourself fill out the figures as re-
11 flected in these work papers?

12 A I helped in the preparation of these figures.

13 Q How were these figures prepared by you? What
14 was the method used?

15 A The method which I used employed myself and my
16 secretary. I would review sequentially from my checking
17 account each and every stub to find out and recall which
18 ones were expenditures related to the practice of medicine
19 and then I would record that amount sequentially from the
20 beginning of the year under the apt and appropriate expen-
21 diture listing.

22 For example, Mr. Edelstein has made several
23 listings such as drugs and supplies, telephone, laboratory
24 fees, electricity and gas and so on. I then added to this
25 list those expenditures which I made for cash and for which

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2 I had receipts in my possession.

3 Q Did you relate to Mr. Edelstein the bank accounts
4 you maintained?

5 A Mr. Edelstein asked me only to list the deposits
6 to my checking account, and that is exactly what I did.

7 Q Did he ever say anything about deposits to other
8 account?

9 A No, he did not.

10 THE COURT: Where was your checking account,
11 Doctor?

12 Q In 1966.

13 A In 1966 it was in the Chemical Corn Bank.

14 THE COURT: Did you have an account there during
15 each of these four years?

16 THE WITNESS: Yes.

17 THE COURT: Was that the only checking account
18 that you had?

19 THE WITNESS: No.

20 THE COURT: All right.

21 Q Was that the only checking account that you
22 maintained in 1966?

23 A Yes, sir.

24 Q What was your usual practice when you received
25 your W-2 form?

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A When I received my W-2 form I would put it aside in the drawer in my desk.

Q What would you do when you received your forms 1099? Did you receive those in the mail?

A Yes, I did.

Q Did you receive forms 1099 in the mail?

A Yes, I did.

Q What did you do when you received these forms?

A When I received each and every one of them I also put them aside in the same drawer.

Q Do you recall how many form 1099's you received?

MR. LAWYER: When?

Q Only for 1966.

MR. LAWYER: I can't tell unless you ask it.

A I received many of them.

Q At the time you completed the work sheet which Mr. Edelstein provided for you, what did you do after that time?

A Well, at that point I turned my attention to giving him the information which he requested pertaining to my income and I pulled out my W-2 form from the Mount Sinai Hospital. I pulled out all of my 1099's from all other sources and I put them together. I then I totalled all of my bank deposits for all bank accounts and reduced that total

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2 sum by an amount which was clearly due through non-taxable
3 income such as transfers and so on, and then reduced that
4 amount by the amount of the W-2 and further revised the
5 resulting amount by the amount of my 1099's, since the final
6 figure was submitted together with the W-2 and the 1099's,
7 as Mr. Edelstein requested me to do.

8 Q Did you mail that information to Mr. Edelstein?

9 A Yes. Excuse me, no. No. All this information
10 was put together in a large brown envelope, generally sealed,
11 and was brought to Mr. Edelstein's office.

12 Q Who brought this information to Mr. Edelstein's
13 office?

14 A The information was brought by my secretary.

15 Q Did there come a time when Mr. Edelstein called
16 you after he received this information?

17 A Sometimes he did and sometimes he did not.

18 Q What usually occurred after this information was
19 submitted to Mr. Edelstein?

20 A The typical occurrence was that I would hear nothing
21 more for many weeks until it was shortly before the date the
22 income tax was due, like April 15. If I didn't hear from him
23 which was the usual occurrence, I would call him two or three
24 or four days before the 15th and ask him how he was proceed-
25 ing.

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2 Always he told me he was in the final stages of
3 preparing the tax and that the form, the final, completed
4 income tax form would be ready for my signature and mailing
5 on the 15th itself or if there was an extension, I believe,
6 of one year at that time.

7 Q At the time you went to his office to pick up the
8 completed return, was there any conversation between you and
9 Mr. Edelstein?

10 A The usual format was that I would call him on
11 the day that I was to pick up the return and almost without
12 exception the time that I picked up the return was in the
13 late afternoon and I would go to his office in the Empire
14 State Building and since this was always the last day there
15 was a certain amount of haste in our conversation because
16 generally I also had to be at the hospital thereafter.

17 Q What did that conversation entail, if anything?

18 A The conversations were fairly regularly the same
19 in the sense that they entailed only two or three things.
20 First of all, he always told me that he would not give me my
21 income tax form until I paid him in full at that time.
22 Secondly, he had the income tax form and attached to it or
23 on top of it there was a small sheet of paper which bore his
24 letterhead and which had listings for the amount of tax due.

25 After I would pay him in full -- and he would

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2 never let me see the returns or anything else until I did pay
3 him in full at that time -- then he showed me the slip of
4 paper and I asked him how much did I have to pay in tax and
5 he told me, which was the amount on the slip of paper, and
6 I would then make out a check for that amount.

7 Mr. Edelstein also had prepared an envelope
8 addressed to the appropriate internal revenue office which
9 was ready for mailing and I would take the check which I
10 wrote at that time in his office together with the tax return
11 enclose that in the envelope, seal it, and of course this was
12 after I had paid him, and then leave, because I was always
13 in a hurry to get to the hospital.

14 THE COURT: Doctor, did you take the return with
15 you when you left?

16 THE WITNESS: Yes, sir.

17 THE COURT: And what did you do with it?

18 THE WITNESS: I always made sure that I took it
19 when I left because considering his attitude about demanding
20 payment in full at the moment I was probably a little fearful
21 that he would not mail it on time, so I took it myself and
22 went to the hospital where we have a mail room and which I
23 know the service is prompt and efficient and from which I
24 mailed it out.

25 THE COURT: So these returns were mailed by you

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2 through the Mount Sinai Hospital mail room?

3 THE WITNESS: Yes, sir.

4 THE COURT: All right.

5 Q Did Mr. Edelstein discuss any other figures he
6 placed on the return?

7 A No. No, he did not.

8 Q Did he ever discuss the amount of income which
9 he was reflecting on your return?

10 A No, he did not.

11 Q Did he ever discuss the necessity for increasing
12 figures which you had placed on your work sheet?

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13 MR. LAWYER: I object to this form of the ques-
14 tion.

15 THE COURT: Sustained as to form.

16 Q Are you aware of the fact that certain figures
17 which you had placed on the work sheets were increased in
18 amount when reflected on your income tax return?

19 A I have only become aware of that during the
20 course of these proceedings.

21 Q Prior to that time did you know about it?

22 A No, sir.

23 Q So therefore in April of 1967, when the 1966
24 return was prepared, there was no discussion with regard to
25 the income items or expense items placed on your return?

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2 A No, there was no discussion of any kind.

3 Q When Mr. Edelstein submitted the completed re-
4 turns to you for filing, did you look at it?

5 A No. As I mentioned a moment ago, I was in a
6 hurry and Mr. Edelstein was in a hurry. I would ask him
7 how much tax did I have to pay. He had this form, slip of
8 paper which indicated the amount and he would also tell me,
9 and I would make out a check for that amount and enclose the
10 check and the form into the envelope which he had already
11 prepared and leave. Generally I was parked in a way that
12 made haste imperative.

13 Q Did Mr. Edelstein return the work sheets for the
14 year 1966, return was prepared?

15 A No, he did not.

16 Q Sir, I wish to show you Government exhibit 12A
17 in evidence, which are the work sheets with regard to the
18 1967 return.

19 THE COURT: Doctor, suppose we stop. We will
20 take a short recess.

21 (The jury left the courtroom.)

22 THE COURT: All right, Mr. Clerk, we will take a
23 few minutes rest.

24 What about our friend Mr. Wen?

25 MR. LAWYER: He advises us that he checked with

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1 the hospital. It would be a fairly impossible task to
2 comply with today or tomorrow and possibly even by Wednesday.
3 The original checks are no longer available insofar as they
4 could find out. There would be microfilms. Therefore I
5 would ask that we be allowed to stipulate in the presence
6 of the jury that Mr. Wen would not be able to produce the
7 checks timely and the government is not asking that it be
8 done and withdraws the request.
9

10 MR. APFLEMAN: I have no objection.

11 Well, with the doctor's testimony to match up
12 certain unidentified income as to Mount Sinai -- let's assume
13 there was 165 checks that they put as income from Mount
14 Sinai and that statement showed that the doctor received
15 165 for travel reimbursement. That should not be included
16 in income.

17 THE COURT: It depends on whether he took the
18 travel expense as a deduction on his income tax.

19 MR. APFLEMAN: And it also depends on the nature
20 of the request. There is no requirement that these figures
21 be picked up as income unless he did take the specific items
22 as a travel deduction. In other words, if he took a travel
23 deduction of \$200 but did not reflect these items received
24 from Mount Sinai, then this wouldn't have been recorded.
25 If he had additional expense of \$100 with regard to another

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2 trip and he assumed another \$65 for this trip based on
3 travel vouchers, this was all received in accordance with
4 the procedure and there is no necessity to include it as
5 income.

6 What I am trying to state is that in the context
7 of the internal revenue code and the revenue procedures
8 issued by the Internal Revenue Service it specifically stated
9 that if a taxpayer received reimbursement of income from
10 an employer and properly submits a voucher with regard to
11 his expenditure an item doesn't have to be included in
12 expenses nor does it have to be reflected in income.

13 MR. LAWYER: Who is contesting that?

14 THE COURT: The whole point, though, if it
15 doesn't have to be included in income it follows that it
16 cannot be taken as a deduction.

17 MR. APPLEMAN: For that specific item, correct.

18 THE COURT: All right. Are you agreed on the
19 form of the stipulation, Mr. Lawyer?

20 MR. LAWYER: Simply that the records are no
21 longer available or they are microfilmed and cannot be
22 produced prior to Wednesday.

23 THE COURT: All right. Which of you gentlemen
24 would like to state it?

25 MR. LAWYER: Would you like to do it, your Honor,

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2 just advise the jury?

3 THE COURT: All right.

4 It is stipulated by counsel for both sides that
5 Mr. Wen could not produce the cancelled checks requested by
6 the government within a time which would not delay the trial,
7 if he could ever produce them. Accordingly, the government
8 has withdraw the request.

9 MR. LAWYER: Yes, sir.

10 THE COURT: Is that all right?

11 MR. AFFLEMAN: All right, your Honor.

12 (Recess.)

13 THE COURT: Mr. Clerk, please bring the jury in.

14 (Jury present.)

15 THE COURT: Mr. Foreman, ladies and gentlemen of
16 the jury, we have reached a conclusion with respect to the
17 problem that we had during the cross-examination of Mr.
18 Wen. Based on information learned from Mr. Wen during the
19 recess counsel for both sides have stipulated that Mr. Wen
20 could not produce the cancelled checks requested by the
21 government within a time which would not delay the trial, if
22 indeed he could ever produce them. Accordingly, the govern-
23 ment has withdraw the request.

24 All right, you may proceed now with Dr. Wolf,
25 Mr. Appleman.

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2 BY MR. APPLEMAN:

3 Q I believe you have Government exhibit 12A in
4 evidence before you.

5 A Yes, I do.

6 Q Does this exhibit reflect the work sheet sent
7 to you by Mr. Edelstein for the year 1967?

8 A Yes, it does, but there appears to have been
9 some changes on the work sheet.

10 Q What changes are you referring to, sir?

11 A I notice that some of the payments which have
12 been recorded in the various columns have been altered from
13 pencil what appears to be ink with an apparent erasure.

14 Q What items are you referring to, sir?

15 A These are three listings in a 1967 item called
16 Medical Coverage by Mr. Edelstein.

17 Q What were the changes with regard to Medical
18 Coverage?

19 A I could only tell you what it appears to look
20 like now, because I have no way of telling what it was be-
21 fore. There seems to be three listings, each for a hundred
22 dollars.

23 Q These three listings are not in your handwriting;
24 is that correct?

25 A Not in my handwriting nor the apparent handwriting

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of the person who recorded the numbers.

Q Do you know any reason as to why these three \$100 figures were added?

A No, I do not.

Q What other changes did you notice with regard to this exhibit?

A I notice under the column entitled "Laboratory Fees" that there are in a similar fashion three apparent changes which have been encircled and erasures.

Q There are three 50 dollar items which were not initially on this schedule which you submitted; is that correct, sir?

A It would appear to be a change. I don't know what was there before.

Q Do you notice any other changes from the original document which you submitted to Mr. Edelstein?

A I don't see any other changes in the reported numbers.

Q Did the same provisions entailed with regard to the information requested by Mr. Edelstein in 1967 re-occur or did it take the same form as the requests as for 1966 information?

A The form was essentially the same, yes.

Q Did you receive the work sheets by mail or hand?

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A I received the work sheets by mail.

Q When you received them, was there any instructions enclosed therewith?

A No, there were no instructions enclosed except the implied instructions from the headings of the various columns which Mr. Edelstein wrote out.

Q Did Mr. Edelstein call you to tell you that he was sending you these work sheets?

A Either Mr. Edelstein called me four or five weeks before the dead line or I called him.

Q I notice that with regard to 1967 we have a column headed "check Dep. 1967." Was that placed thereon by Mr. Edelstein or you, sir?

A That was placed by Mr. Edelstein in his own handwriting.

Q Did he relate to you how that figure should be computed?

A He told me to list like he did in the previous year each and every deposit to my checking account.

Q And is that what you did, sir?

A Yes, that is what I did.

Q Did you receive any forms W-2 for the year 1967?

A I received a W-2 form from the Mount Sinai Hospital.

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2 Q What did you do with that form when you received
3 it?

4 A I placed the W-2 form in a side drawer of my
5 desk where I customarily keep these things.

6 Q Did you receive any form 1099's for 1967?

7 A Yes, I received many 1099 forms.

8 Q What did you do when you received these forms
9 1099?

10 A I placed them together in the same drawer where
11 I had my W-2 forms.

12 Q If you look on page 1 of Government exhibit 12A
13 in evidence there is an item circled stating "receipt includes
14 United Medical Service \$4,563.91."

15 Did you write that?

16 A No, this is in Mr. Edelstein's handwriting, not
17 mine.

18 Q There is also an item circled indicating a
19 subtraction of \$627.20 right underneath that receipt. Do
20 you know what that is for?

21 A I do not know what that is for. It is not in
22 my handwriting.

23 Q For the year 1967 did Mr. Edelstein request any
24 additional information?

25 A You mean compared to what is asked for in 1966?

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Q That is correct?

A No, he did not.

Q With regard to your preparation of returns for 1966 and 1967, did you also prepare work papers pertaining to your stock transactions?

A Yes, I did.

Q Did you submit these to Mr. Edelstein?

A Yes, I did.

Q I also wish to show you a letter typewritten on your stationary dated March 18, 1968, pertaining to a separation agreement which you sent to Mr. Edelstein as he requested.

A Yes, sir.

Q Did you mail that letter to Mr. Edelstein?

A Yes, I did.

Q Did you enclose therewith a copy of the separation agreement?

A Yes, I did.

Q If you will notice, there is some additional handwriting on this letter which states "also enclosed -- please note other side." Is that in your handwriting, sir?

A No, that appears to be in the handwriting of Mr. Edelstein.

Q There is also some handwriting underneath your

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2 signature which says "PS, please return it to me. It is my
3 only copy."

4 A That is in my handwriting.

5 Q When you turn over this letter, is there any-
6 thing written on the back?

7 A Yes, there are notations in sentences written on
8 the back.

9 Q Did you write those notations or sentences?

10 A I did not write it, no.

11 Q Is that your signature underneath the notation
12 and information?

13 A Yes. The signature is my signature in my hand-
14 writing and the notations appear to be in Mr. Edelstein's
15 handwriting.

16 Q Do you recall when you signed the reverse side
17 of this letter?

18 A Yes, I do.

19 Q When did you sign the reverse side of this letter?

20 A This side was signed in 1970.

21 Q And how do you know that the reverse side of that
22 letter was signed in 1970?

23 A Because I vaguely remember the circumstances under
24 which it was signed.

25 Q Can you please tell the court and jury what those

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2 circumstances were?

3 A On about April 15, the income tax due date for
4 the 1969 income tax, April 15, 1970, I went to Mr. Edelstein's
5 office to pick up my return and in addition to his asking
6 for his fee and in addition to him telling me how much in-
7 come tax I had to pay and my making out the check, he wrote
8 this statement on the back of this letter and insisted that
9 I sign it or he would not give me my tax return back.
10 In fact, when I signed the statement first I signed it
11 Robert Wolf and he wanted me to sign it Robert L. Wolf, so
12 I inserted the L with an indication that it was inserted and
13 he became annoyed that --

14 MR. LAWYER: Objection to this.

15 THE COURT: Yes. You have to tell us what was
16 said and done, Doctor, but under our rules you can't tell us
17 opinions, conclusions, process of thought and the like.

18 Q Did he ask you to sign it a second time as Robert
19 L. Wolf?

20 A Yes, he insisted I sign it as Robert L. Wolf a
21 second time.

22 Q At the time you signed that statement did he
23 discuss the figures placed on the reverse side of this form?

24 A Not at all.

25 Q Did Mr. Edelstein, when he completed your 1969

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2 and 1967 income tax returns, in each of these periods, re-
3 quest that you sign a statement with regard to the figures
4 reflected on these returns?

5 A No, he did not request that at that time.

6 Q Now, referring back to Government exhibit 12A
7 and the column "check Dep 1967," can you please tell the
8 court and jury the total amount which you showed as check
9 deposits for the year 1967?

10 A The total amount at the end of this listing,
11 which goes into three separate columns, apparently was
12 obtained by certain additions and subtractions and comes out,
13 if it is true, to be \$50,827.61.

14 Q Now, there is a subtraction of \$627.20 from the
15 amount of \$51,499.81 which is apparently in the original
16 handwriting. Do you know what that reflection is?

17 A I do not because these calculations are not in
18 my handwriting, but I notice the number 62720 matches the
19 same number on the first page of the form which you mentioned
20 before which is encircled.

21 Q Mr. Edelstein ever discuss the amount of income
22 that he was reporting as your medical practice fees?

23 A No, he never did.

24 Q At the time he completed the 1967 return did he
25 deliver the return to you or did you go up to his office and

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2 pick up the return?

3 A I went to his office to pick up the return.

4 Q Can you please relate what happened at that time?

5 A About a day or two before the deadline I called
6 him and asked him if he was finished with the return and he
7 indicated that he would be finished on the date that the
8 income was due to be filed, and so then in the afternoon or
9 the latter part of the afternoon once again I would go down
10 to his office in order to retrieve my return.

98 11 Q At that time did he discuss anything regarding
12 the return with you?

13 A No. He produced the return with, once again,
14 the little memorandum type slip of paper which indicated the
15 amount of tax I had to pay. I asked him how much tax he had
16 to pay and he would point to that number. I would then make
17 out a check for that amount and put it into the envelope which
18 he had prepared ahead of time for mailing.

19 Q Did you to the best of your recollection and
20 belief mail that through the Mount Sinai Hospital mail room?

21 A He would not give me the return until I paid him
22 his fee, which I would do. Then I would take the envelope
23 and mail it from the Mount Sinai Hospital mail room.

24 Q Did you ever obtain an extension to file any of
25 your returns?

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2 A Yes, I believe I did.

3 Q Do you know for which year?

4 A I don't recall which year it was.

5 Q If an extension was obtained, at what date would
6 you normally have seen Mr. Edelstein?

7 MR. LAWYER: Objection.

8 THE COURT: Sustained as to form.

9 Q Would Mr. Edelstein have waited until approxi-
10 mately the last day before he had you sign the return?

11 MR. LAWYER: Objection.

12 THE COURT: This is hypothetical and speculative.
13 That is why I sustained it. You can ask him in what year
14 the extension was, for how long it was and everything that
15 happened. I will certainly permit that.

16 Q In 1967 did you again submit this work sheet
17 plus the W-2 form and the forms 1099 to Mr. Edelstein?

18 MR. LAWYER: It is very repetitious, about the
19 third time around for 1967.

20 MR. APPLEMAN: I don't believe I covered it.

21 THE COURT: I will permit it.

22 A Yes, sir, I did.

23 Q I show you Government exhibit 13A, the work
24 sheet with regard to your 1968 income tax return. Did Mr.
25 Edelstein mail or deliver to you the work sheets with the

headings thereon for the year 1968?

A Yes, this work sheet was received by me by mail.

Q How do you know it was received by mail?

A Because on every occasion they were all received by mail.

Q And Mr. Edelstein always placed the headings thereon?

A Yes, he did.

Q Was there any special instructions with regard to this work sheet received by you?

A There were no additional instructions except the implied ones and the ones that he told me on the telephone in the past, but the implied ones being to list the expenditures as recorded under the appropriate heading.

Q Did he give you any special instructions with regard to reporting your medical practice income?

A The instructions that he gave me were the same as in the past.

Q Is there any column or columns reflecting income from your medical practice?

A The only column on this work sheet that has reference to it is a listing of my check deposits for 1968.

Q What was the total amount listed thereon?

A The total amount for the Chemical Check Deposits

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2 is \$39,510.66.

3 Q For the year 1968, did you have any other
4 checking accounts?

5 A Yes.

6 Q Where else did you have a checking account for
7 the year 1968?

8 A I believe I had one in the **Barclays** Bank.

9 Q Did you include the deposits to that account on
10 this worksheet?

11 A I included all of the deposits on the work-
12 sheet figure which was given to him, but it does not appear
13 on these papers here. The listing of Chemical check deposits
14 is exactly that. It is a listing of the deposits in the
15 Chemical checking account.

16 Q Did you ever give him the listing of your check
17 deposits to the **Barclays** Bank for 1968?

18 A No, he never asked for that.

19 Q Did you have any other checking accounts in 1968
20 besides the **Barclays** Bank and Chemical Bank?

21 A No, I did not.

22 Q Did you have any other bank accounts for 1968?

23 A Yes, I did.

24 Q Were there any deposits made to these other
25 accounts?

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2 A Yes, there was.

3 Q What were these other bank accounts to which
4 deposits were made?

5 A I had a savings account in the Chemical Corn
6 Bank. I had a savings account, I believe, in Bankers Trust.
7 And I had a savings account in the Bank of New York.

8 Q Did you reflect deposits to those accounts in
9 your listing of the work sheet?

10 A No. This listing in the work sheet gave him the
11 deposits in the Chemical checking account as he requested.

12 Q Did he ever request that all your deposits be
13 listed on these work sheets?

14 A No, he did not.

15 Q Did you receive any W-2 forms for the year 1968?

16 A Yes, I did. I received a W-2 from the Mount
17 Sinai Medical School.

18 Q At the time that you received this form, what
19 did you do?

20 A I placed it in a side drawer of my desk.

21 Q Did you receive any forms 1099 for the year 1968?

22 A Yes, I received many of those.

23 Q What did you do with those forms 1099's, when
24 you received them?

25 A I placed them together in the same side drawer

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2 of my desk.

3 Q Did you yourself complete the work sheet as
4 reflected by Government exhibit 13A in evidence?

5 A I contributed to the compiling of the data but I
6 did not actually record the data.

7 Q Who recorded the data?

8 A My secretary recorded the data.

9 Q Under your supervision?

10 A Yes.

11 Q After this data was completed, what did you do?

12 A After the data was completed I then completed
13 my professional income in a similar fashion to the method
14 that I used in 1967, and 1966 and recorded that number on a
15 piece of paper and enclosed that piece of paper with the
16 W-2 form, a pile of 1099 forms and with this batch of work
17 sheets and I put it into a large brown envelope and it was
18 delivered to Mr. Edelstein by hand.

19 Q Who delivered that?

20 A My secretary.

21 Q After you delivered all this information to Mr.
22 Edelstein did there come a time when he contacted you or you
23 contacted him?

24 A Either he telephoned me or I telephoned him a
25 day before the filing due date of the income tax in order

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2 to arrange for my calling for the income tax form.

3 Q Did you yourself go out to obtain these forms?

4 A Yes, I did.

5 Q Was there any discussion between you and Mr.
6 Edelstein at the time you obtained the income tax returns?

7 A No, once again, the format was the same as in
8 the preceding years. I would go there in the latter part of
9 the afternoon. He would produce the income tax forms with
10 the attached memorandum as the amount of tax due. He would
11 tell me what his fee was and I would pay him the fee in
12 general. I asked him how much tax I had to pay. He told
13 me it was the same amount as set forth in the memorandum.
14 I would make out a check and enclose the check together with
15 the income tax form in the envelope which he had previously
16 addressed.

17 Q Was there ever any discussion as to the amount
18 which was reflected on the return as your income from your
19 medical practice?

20 A No, there was no discussion and he was a certified
21 accountant. I had no reason to question him.

22 Q Did he ever discuss any of the expenses which
23 you listed for him on these work sheets?

24 A No, not at all.

25 Q I wish to show you Government exhibit 14A in

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2 evidence. Can you please examine it, and relate whether those
3 are the work sheets that you prepared for the preparation
4 of your 1969 tax return?

5 A Yes, these are the work sheets, but there is
6 apparently a missing sheet which recorded the Chemical
7 check deposits, the same tabulation that he requested each
8 and every year.

99 9 Q Were these papers with headings submitted to you
10 by Mr. Edelstein?

11 A In this case, no, because apparently he mailed
12 the forms like he had done in all preceding years but for
13 some reason they didn't reach me and so I called him to ask
14 him about it and he said that I should take any large piece
15 of paper that I might have and construct it in a similar
16 fashion to the preceding years, and then he told me what the
17 headings of the columns should be.

18 Q Did he read the headings to you over the phone?

19 A Yes, he did.

20 Q Did he see you personally to determine that the
21 proper headings were reflected on these work sheets?

22 A No, he did not.

23 THE COURT: I take it, Doctor, on these sheets
24 the headings are in your handwriting?

25 THE WITNESS: Yes, sir, they are.

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Q Did Mr. Edelstein for the years 1966, 1967 and 1968 ever return the work sheets that you submitted to him?

A No, he never did.

Q So, therefore, you will have no way of knowing what headings to place on these work sheets unless Mr. Edelstein related that to you?

MR. LAWYER: Objection.

THE COURT: Sustained.

Q Did you prepare these work sheets by yourself, sir?

A No, I didn't.

Q Did anyone assist you?

A Yes.

Q Who assisted you, sir?

A My secretary.

Q Were these figures obtained under your supervision and direction?

A Yes, they were. In the same fashion as in the previous years.

Q However, there is no column here with regard to check deposits for the years 1968; is that right, sir?

A Not in the batch of papers here, but such a listing was prepared as in the previous year.

Q Are you certain of that?

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2 A I'm positive of that.

3 Q On the front of Government exhibit 14A in evidence

4 there is a statement on a prescription blank of yours

5 stating as follows: "Income \$37,201.05," with a line drawn

6 underneath it. Do you see it, sir?

7 A Yes, I do.

8 Q Then underneath it it says "Total bank deposits

9 \$41,706.54," and a notation "bank deposits exceed income

10 because bank deposits reflect sales stocks and other money

11 not related to business."

12 Is that your handwriting, sir?

13 A Yes, it is my handwriting.

14 Q When was this submitted to Mr. Edelstein?

15 A This was submitted sometime after 1969.

16 Q And at whose request?

17 A At Mr. Edelstein's request.

18 Q Was this done while you were in Mr. Edelstein's

19 office?

20 A I can't clearly recall whether I did it in his

21 office at a later date like when I picked up my income tax,

22 but that was the reason why I would be in this office, or

23 whether he called me up on the telephone a year later or

24 so and essentially demanded that I write this. In either

25 event, he did demand that I write it because that time I

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2 believe these proceedings had already started and he wanted
3 this.

4 Q Did you receive any W-2 forms for the year 1969?

5 A I received a W-2 from the Mount Sinai Medical
6 School.

7 Q Did you receive any forms 1099 with regard to
8 the year 1969?

9 A I received many of them.

10 Q And at the time you received the W-2 and the
11 forms 1099, what did you do, sir?

12 A When I received them I would place them in my
13 desk drawer.

14 Q How would they get into the hands of Mr.
15 Edelstein?

16 A In the fashion similar to all the other years,
17 when I finished compiling these work sheets I would enclose
18 the work sheets, the W-2 form, all of the accumulated 1099
19 forms and the figure which I calculated which represented
20 my professional income, not including the W-2 or 1099's.

21 Q Did there come a time when the income tax
22 return for 1969 was prepared?

23 A Yes, sir.

24 Q And what happened at that time?

25 A Either I called Mr. Edelstein a day or two

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2 beforehand or he called me again and we arranged for me to
3 pick up the income tax form on the due date of the income
4 tax.

5 Q Did you have any discussions with Mr. Edelstein
6 at the time you picked up your 1969 income tax return?

7 A No. Once again I would go down to his office.
8 He would produce the income tax form with the addressed
9 envelope and the attached memorandum as to the amount of tax
10 due. I would ask him the amount of tax due. He would tell
11 me the amount which was the same as on the note which he had
12 associated with the tax form and he would tell me what his
13 fee was and demand that I pay him.

14 Q Did you examine the return afterwards?

15 A No, I made out the check like he instructed me
16 to and enclosed the check with the tax form in his envelope.

17 Q Did you ever have any other problems with regard
18 to the 1966 or 1967 or 1968 or 1969 income tax returns pre-
19 pared by Mr. Edelstein prior to this investigation?

20 MR. LAWYER: I object to that question, did he
21 ever have any other problems.

22 MR. APPLEMAN: Your Honor, the meaning will be-
23 come clear.

24 THE COURT: Did the Internal Revenue Service
25 raise any questions before this proceeding started?

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2 THE WITNESS: Yes, sir.

3 THE COURT: All right.

4 Q Sir, I wish to show you Defendant's exhibit I for
5 identification, which is a document form 4084 from the
6 Internal Revenue Service. Did you receive that form?

7 A Yes, I did.

8 MR. APPLEMAN: I wish to now place this in
9 evidence.

10 MR. LAWYER: I object on the ground of relevance.

11 THE COURT: All right, let me see it.

12 MR. APPLEMAN: This indicates a deficiency on
13 the 1966 return.

14 THE COURT: I will permit it. Overruled. Mark
15 it.

16 xxx (Defendant's exhibit I received in evidence.)

17 Q Did you question Mr. Edelstein with regard to
18 the deficiency pertaining to the 1966 return of \$236.25?

19 A Yes, I did, many times.

20 Q What did Mr. Edelstein state to you?

21 A He was never able to answer me. He always hedged,
22 and --

23 THE COURT: Just tell us what he said, Doctor.

24 Q Just what he said.

25 A He said that he did not know why there was a

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2 deficiency and he would try to find out and let me know, and
3 when I asked him over the course of the ensuing months and
4 years he never had an answer.

5 Q Did you write to him requesting an explanation
6 for this deficiency?

7 A Yes, I believe I enclosed it in one of my notes
8 to him.

9 Q How did the government collect its deficiency
10 from you, sir?

11 A That money was taken from my salary checks from
12 the Mount Sinai Medical School.

13 Q In other words, the government issued a levy with
14 regard to your salary checks?

15 A Yes.

16 Q Correct?

17 A Yes.

18 Q I wish to show you Government exhibit 15 in
19 evidence, a letter dated February 23, 1970. In the last
20 paragraph you make reference to this amount that was levied
21 by the government?

22 A Yes, I do.

23 Q Do you request that Mr. Edelstein explain why
24 the government obtained this money from you?

25 A Yes. I said that I still do not --

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THE COURT: Is this in evidence?

MR. APFLEMAN: Yes.

THE COURT: You can read it to the jury, or parts of it, if you like.

(Mr. Appleman read from Government exhibit 15.)

Q Did you ever receive that money back from the Government, sir?

A No, I didn't.

Q Do you to this day know the reason for the levy?

A No, I do not.

Q I wish to show you a copy of Defendant's exhibit E in evidence, which is on the letterhead of Edelstein and Cohen and Cohen is crossed out. Do you recall that statement, sir?

A Yes, I do.

Q And that statement which reflects your sales for 1966, 1967, 1968 and 1969 and your expenses for the same period with the notation above "does not include W-2 or 1099's issued to me", was that prepared by you, sir?

A No, this statement was written by Mr. Edelstein.

Q Did he ask you to sign it?

A Yes, he did.

Q On what date did he ask you to sign that, sir?

A He asked me to sign this on April 15, 1970.

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Q How do you know that he asked you to sign it on April 15, 1970?

A Because I clearly recall the conversation that happened at that time.

Q Do you notice the date that is listed on Defendant's exhibit E, sir?

A Yes.

Q What is the date listed on Defendant's exhibit E?

A The date is February 24, 1970.

Q Is that date in your handwriting?

A No, it is not.

Q When you signed that statement was the date listed on this paper?

A I don't recall.

Q But you do know that you did not sign this on February 24, 1970, is that right, sir?

A That is true. It was signed on April 15, the date that I picked up my income tax form.

Q Who requested that you sign this statement, sir?

A He insisted that I sign this statement for what he called the sales for income for the four years and then the additional statement that the sales or income did not include the 1969's or W-2.

Q Did he tell you why he desired to have this state-

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2 A No. He needed it for his records. This was the
3 only statement that I made not specifically --

4 Q Did you think it was strange --

5 MR. LAWYER: Objection.

6 THE COURT: Yes, that is starting out wrong.
7 I sustain the objection.

8 Q Did you question Mr. Edelstein as to why at this
9 date he desired you to sign a statement of this type?

10 A I don't recall whether I questioned him, but I
11 had assumed that since these investigations and proceedings
12 were already going on that it was related to that.

13 Q Did Mr. Edelstein request information pertaining to
14 loans and exchanges that you might have had in the year
15 1966?

16 A You mean above and beyond what was on the --

17 Q Did he ever request information from you on or
18 about August 15, 1972 regarding loans and exchanges that you
19 might have had in 1966?

20 A No.

21 Q Did you ever submit to Mr. Edelstein a list of
22 the exchanges as reflected by Government exhibit 516?

23 A What is the question, please?

24 THE COURT: Read the question, Mr. Reporter.

25 (Question read.)

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2 A No, I never did.

3 Q Did Mr. Edelstein ever request information per-
4 taining to loans and exchanges that you might have had during
5 the period 1966 through 1969?

6 A No, he didn't.

7 Q Did Mr. Edelstein relate to you the duties and
8 functions of special agent Morris Skolnick?

9 MR. LAWYER: Objection.

10 THE COURT: Sustained.

11 Q Did Mr. Edelstein with regard to his representa-
12 tion ever state that you were being investigated by the
13 Intelligence Division of the Internal Revenue Service?

14 A No, he never said it in that fashion.

15 Q What did he say with regard to the investigation
16 that was going on during this period of time?

17 A His attitude always was one --

18 THE COURT: Just what he said, Doctor, not his
19 attitude.

20 Q Just what he said?

21 A He said that I was being audited for my returns
22 for these years and he said I had nothing to worry about.

23 Q Did he request that you submit your bank state-
24 ments and cancelled checks with regard to your Chemical
25 Bank checking account for the agents of the Internal Revenue

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2 Service?

3 A Yes, I believe he did, he did ask me to submit
4 the -- that information.

5 Q Did you ever question him as to why he needed
6 this information?

7 A Yes, he said this was part of their audit.

8 Q He always used the word audit, not investigation?

9 A No, sir, never investigation.

10 Q When did you open the bank account in Switzer-
11 land?

12 A The bank account in Switzerland was opened in
13 the latter part of -- it was in 1968, I believe.

14 Q Was there any special reason for opening a Swiss
15 bank account at that time?

16 MR. LAWYER: Objection.

17 THE COURT: I'll permit it.

18 A Yes, there was.

19 Q What was that reason?

20 A The reason was based upon the fact that my ex-
21 wife had made it known to me on many occasions that she was
22 going to --

23 MR. LAWYER: I think we are getting into hearsay.

24 THE COURT: It is not for the proof of what she
25 said but it is based on what he learned from her.

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2 MR. LAWYER: I will withdraw the objection.

3 THE COURT: Go ahead, Doctor.

4 A She said that she was trying to -- that she was
5 going to get all the money that she possibly could from me.
6 At the same time, all during these very emotional, shattering
7 matters of dispute my son indicated that he wanted to live
8 with me and not with her. It was out of the fear --

9 MR. LAWYER: I am objecting.

10 THE COURT: Yes, I think we have gone far away.
11 You got the Swiss bank account in order to protect the money
12 from your wife; is that it?

13 Q Is that it?

14 A No, it was to protect the money for my son.

15 Q You transferred it to Switzerland so that your
16 wife could not put her hands on it?

17 THE COURT: He said he transferred it to Switzer-
18 land to protect it.

19 A I wanted to insure that my son could have the
20 use of the money and my wife couldn't squander it in her
21 legal adduces.

22 THE COURT: All right, that is as much as we need
23 on that.

24 Q Were there any taxable transactions that took
25 place in the Swiss account?

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2 A No.

3 Q Did you have as a secretary a Mrs. Milcznski

4 A Mrs. Milcznski was my secretary at one time.

5 Q What period of time did you employ her?

6 A She was employed from mostly the early part of
7 1960 until 1969, I believe.

8 Q Was there any special reason that her employment
9 ended?

10 A Yes, there was.

11 Q What were the facts pertaining to her ending her
12 employment relationship with you?

13 A Although she was a competent and careful secre-
14 tary during the early years --

15 Q I think we have some competition from the subway.
16 (Pause.)

17 THE COURT: All right, please try again. Keep
18 your voice up.

19 A -- she was a rather able and competent secretary
20 during the early years, which coincided with the time that
21 her husband was critically ill with TB and she was the
22 support of the family --

23 MR. LAWYER: I object to this. It is getting
24 ridiculous.

25 THE COURT: Do I understand you to say that you

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2 fired her?

3 THE WITNESS: Yes, she was discharged.

101 4 THE COURT: He is entitled to say why he fired
5 her.

6 MR. APFLEMAN: Yes.

7 THE COURT: Why did you hire her?

8 THE WITNESS: Her husband recovered from the
9 tuberculosis involvement of his spine during the last year
10 or two and she was employed with me in a financial need for
11 earnings did not reside with her any more and she became
12 much less efficient.

13 THE COURT: You fired her for inefficiency?

14 THE WITNESS: I encouraged her to do better, but
15 she didn't have her mind on the job.

16 Q Did you fire her for inefficiency?

17 A Yes, in a sense I did, yes.

18 Q Did you ever tell Mrs. Milcznski not to report
19 the amount of monies you gave her on her income tax returns?

20 A No, I never did.

21 Q Did you claim those amounts which you gave her
22 as deductions on your income tax returns?

23 A Of course I did.

24 Q Did you ever request Mrs. Milcznski to change
25 any records which you or she maintained in your office?

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2 A No, I never did.

3 Q Sir, I wish to show you this document which I
4 will have marked for identification.

xxx 5 (Defendant's exhibit T marked for identification.)

6 Q This is a photocopy of a request for funds from
7 Mount Sinai Hospital with the date shown thereon as 1/28/65.

8 MR. LAWYER: He is reading from an exhibit that
9 hasn't been put in evidence.

10 THE COURT: Is it in evidence?

11 MR. APPLEMAN: No, not yet, your Honor.

12 THE COURT: All right.

13 Q Will you please look at Defendant's exhibit T
14 for identification and relate whether that was a travel
15 reimbursement request from Mount Sinai Hospital?

16 A Yes, sir, it is.

17 MR. APPLEMAN: I wish to offer it.

18 MR. LAWYER: I object. It is already in evidence
19 through Mr. Wen. This is a photocopy of an identical paper,
20 so that it will be in twice.

21 THE COURT: Is that true? Do you agree that it
22 is already in evidence, Mr. Appleman?

23 MR. APPLEMAN: I will tell you in a minute.
24 Mr. Wen made a good listing.

25 Yes, your Honor, I agree.

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2 THE COURT: All right, then, we don't need it
3 again.

4 MR. APPLEMAN: We don't need it, your Honor.

5 THE COURT: All right.

6 Q I wish to show you Defendant's exhibit P in
7 evidence with regard to travel expense funds requested from
8 Mount Sinai Hospital in February 1966. Will you please
9 state what the amount of that request was for.

10 A \$138.25.

11 Q I asked you to look at Government exhibit 524 in
12 evidence and relate if there is a deposit listed under the
13 heading "unidentified professional income" for the same
14 amount?

15 A Yes, there is a listing under unidentified
16 professional income.

17 Q In the amount of \$138.25?

18 A \$138.25, yes.

19 Q Which was deposited to your account on February
20 14, 1966?

21 A That is true.

22 THE COURT: Mr. Appleman, as to such items, unless
23 the doctor can testify positively that the items are the same,
24 I don't think he adds a thing to the exhibits which are al-
25 ready in evidence. I will permit you to argue that they are

1 mceg 111 R.L. Wolf-direct
 2 the same.

3 MR. APPLEMAN: Except for the fact, your Honor,
 4 that these amounts were placed as income by the government.

5 THE COURT: Yes, but there is nothing that the
 6 doctor in his testimony can add or subtract unless he is
 7 prepared to testify from his own knowledge about it.

8 MR. APPLEMAN: Okay, your Honor.

9 THE COURT: If it is already in evidence, you
 10 can make whatever argument is appropriate to the jury.

xxx 11 (Defendant's exhibit U marked for identification.)

12 Q Is this a bill of sale? Will you please identify
 13 this? Is it a bill rendered to your former wife?

14 A Yes.

15 MR. APPLEMAN: I will submit this into evidence.

16 MR. LAWYER: I object on the ground of relevancy.
 17 Nothing on its face --

18 THE COURT: Let me see it.

19 There is nothing on this paper that indicates
 20 that it is relevant. Maybe something else will develop.
 21 I will sustain the objection.

22 MR. APPLEMAN: This is a bill of sale for a
 23 dish washer of \$75. When of the deposits listed on the
 24 government's exhibits at approximately the same date is a
 25 check for the amount of \$75.

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2 THE COURT: The paper doesn't indicate that it
3 got the \$75. You can ask him if he got the \$75 on or about
4 the date of this paper.

5 Q On or about February 23, 1966, did you receive
6 \$75 from your wife in payment for a Hotpoint Dishwasher with
7 the notation, "no refund"?

8 A Yes, I did.

9 THE COURT: All right, I will admit the document
10 in evidence. The objection is overruled.

11 (Defendant's exhibit U received in evidence.)
xxx

12 THE COURT: This is on the theory that one of the
13 deposits is this \$75.

14 MR. APPLEMAN: That is correct, your Honor.

15 THE COURT: All right.

16 Q Sir, using the same theory -- I will first have
17 this marked for identification.

18 (Defendant's exhibit V marked for identification.)
xxx

19 Q -- on June 29, 1966 did you submit a check for
20 \$35 to a Mrs. Judith Schnur?

21 A Yes, I did.

22 Q What were the facts regarding that payment to
23 Mrs. Schnur?

24 A On or about that day I received a check from a
25 third party entitled "The National Cash Register Company" for

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\$35 on behalf of Mrs. Schnur and apparently the amount had previously been paid, so I issued my own check and deposited the check which I received.

THE COURT: And the check was received from whom?

THE WITNESS: The National Cash Register Company.

MR. APPLEMAN: The check was received from the National Cash Register Company.

THE COURT: On what theory is that check for \$35 from the National Cash Register Company admissible?

MR. APPLEMAN: It went to the doctor and the doctor was just a conduit who transmitted it to Mrs. Schnur.

THE COURT: How would you happen to be paying Mrs. Schnur on behalf of the National Cash Register Company?

THE WITNESS: The usual circumstances would be that the patient's account had been paid. The patient submitted a request for payment from her medical insurance company or place of employment who issued the check to me instead of to the patient.

THE COURT: And you had already been paid by the patient?

THE WITNESS: Yes.

THE COURT: Is that what happened in this instance?

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THE WITNESS: Yes. Then I would deposit that check and issue another one.

THE COURT: Mr. Lawyer, any objection?

MR. LAWYER: No, sir.

THE COURT: Mark it.

(Defendant's exhibit V received in evidence.)

(Defendant's exhibit W marked for identification.)

MR. APPLEMAN: Defendant's exhibit W for identification consists of two pages.

Q Would you please read this, Doctor, and relate the circumstances surrounding these two letters?

THE COURT: Wait. Show it to Mr. Lawyer, first. You are ultimately going to offer these two pictures in evidence, are you not?

MR. APPLEMAN: Definitely.

THE COURT: All right, take a look at them, Mr. Lawyer.

MR. LAWYER: I object to both and I think the court should look at them. It will be apparent that there is no foundation for putting either of them in.

THE COURT: All right.

I must say I don't understand any connection myself. I must say that the first one looks like a reimbursement, not income.

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R. L. Wolf-direct

2 MR. APPLEMAN: This was an amount originally
3 received by the doctor and Blue Shield requested reimburse-
4 ment.

5 THE COURT: What has that got to do with any
6 issue here?

7 MR. APPLEMAN: This is a proper deduction from
8 the income reported that year or it could even be totally
9 disregarded if you don't take it as an expenditure.

10 THE COURT: Well, I'll sustain the objection.

11 Q Did you perform any services for your father at
12 the time he was ill?

13 A Yes, I did.

14 THE COURT: What has that got to do with anything
15 here?

16 MR. APPLEMAN: I am trying --

17 THE COURT: This is not a civil tax case, as I
18 will instruct the jury.

19 MR. APPLEMAN: I wish to amend defendant's exhibit
20 N for identification to include three remittance advices from
21 G. D. Searler and Company to Dr. Wolf with regard to monies
22 advanced to him. Defendant's exhibit N for identification
23 consisted only of one, I think, for the sake of expediency,
24 and now I would like to add two more on that for the same
25 company for the same year.

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R. L. Wolf-direct

2 THE COURT: If you want to add two further pieces
3 of paper to an exhibit, exhibit N, since it is not admitted
4 in evidence you can do it. Just have the clerk add them to
5 it.

6 Q Will you please identify whether these photocopies
7 of checks from Searler and Company were received by you?

8 A Yes, they were.

9 MR. APPLEMAN: I wish to submit them in evidence.

10 THE COURT: You want to offer them in evidence
11 now as part of exhibit N for identification?

12 MR. APPLEMAN: Yes.

13 MR. LAWYER: No objection.

14 THE COURT: All right, mark it.

15 xxx

(Defendant's exhibit N received in evidence.)

16 Q Did you in the year 1969 receive from Searler's
17 a travel advance of \$500 for your trip to Basle, Switzerland,
18 \$1,798.50 for a first class ticket to Melbourne, Australia,
19 in the year 1969, and \$423.96?

20 A Yes, I did receive these checks.

21 MR. LAWYER: I am just confused. Travel advances?

22 MR. APPLEMAN: Travel advances or reimbursements.

23 MR. LAWYER: It makes a big difference.

24 THE COURT: I must assume it could be either.

25 Let's ask the witness.

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2 Do you want to ask a question on the voir dire?

3 MR. LAWYER: Yes.

4 THE COURT: All right, Mr. Lawyer will ask him.

5 VOIR DIRE

6 EXAMINATION BY MR. LAWYER:

7 Q Referring to Defendant's exhibit N in evidence,
8 Doctor Wolf, were these reimbursements or were they advances,
9 sir? Was this amount of \$500 an advance?

10 A It is labeled "travel advance."

11 Q Meaning you got it ahead of time?

12 A It is dated June 17, which is before the time I
13 went.

14 Q And one for \$1,798.50, was that an advance or
15 reimbursement?

16 A This was also dated before the time that I left.

17 Q So it is an advance?

18 A Yes.

19 Q And one for \$423.96, was that a reimbursement or
20 an advance?

21 A It is dated May 2, 1969, which, according to my
22 recollection, was before the time I went.

23 MR. LAWYER: Your Honor, I think it is clear that
24 they really aren't admissible.

25 THE COURT: And the last one is an advance also?

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2 MR. APPLEMAN: They were advances.

3 THE COURT: We can straighten that out a little
4 later. I will consider a motion to strike.

5 All right, let's go on.

6 BY MR. APPLEMAN:

7 Q Dr. Wolf, did you request information from Mr.
8 Edelstein as to the progress of the "audit" that was being
9 accomplished by the Internal Revenue Service for the years
10 1966 through 1969?

11 A Yes, I did.

12 Q What did Mr. Edelstein say to you with regard to
13 your inquiry?

14 A His response always was the same: That I should
15 not be concerned, that I had nothing to worry about, and he
16 would say words to the effect that if the government doesn't
17 bother you, then you don't have to do anything.

18 Q Did he ever call you on the phone or did you call
19 him on the phone in response to a request and did he ever
20 state to you that a special agent was present with regard to
21 information he requested from you?

22 A No, I never received that telephone call.

23 Q Did he ever request that you personally meet
24 with the representatives of the Internal Revenue Service?

25 A No, he never did.

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2 Q Did he ever recommend during the course of the
3 "audit" that you possibly might need legal help?

4 A No, he never did that.

5 THE COURT: Was Mr. Edelstein ever in your office,
6 Doctor?

7 THE WITNESS: Yes, sir, as a patient.

8 THE COURT: But never on business?

9 THE WITNESS: No, sir.

10 THE COURT: You mean never on accounting business?

11 THE WITNESS: No, sir.

12 Q All accounting business was transacted in Mr.
13 Edelstein's office; is that correct?

14 A Yes, sir.

15 Q Did Mr. Edelstein ever relate to you that the
16 special agent knew about your Swiss bank account?

17 A No, sir, he never related that to me.

18 Q Did Mr. Edelstein ever request whether you did
19 or did not have foreign bank accounts?

20 A No, he never asked me about any bank accounts
21 except the Chemical checking account.

22 Q When you decided to transfer funds to a Swiss
23 bank account did you confer with anyone?

24 A Yes, I did.

25 Q Whom did you confer with?

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2 A I conferred with the administrators and officials
3 at the bank.

4 Q Which bank?

5 A Of the Barclays bank.

6 Q What did they say to you with regard to transferring
7 funds to Switzerland?

8 A They told me of the various mechanisms of making
9 such a transaction.

10 Q Did he relate more than one mechanism that you
11 could use for the transfer of these funds?

12 A I believe he mentioned two or three possible
13 mechanisms, but they were all variations of the same kind of
14 transactions, the only difference being in whether the
15 transaction proceeded by mail or air mail or cable or some
16 other method of communication.

17 Q Did he ever relate to you that the method chosen
18 by you could not be discovered by the Internal Revenue
19 Service?

20 MR. LAWYER: Objection.

21 THE COURT: There is nothing in the case about
22 anything of that sort.

23 MR. APPELMAN: Of the fact that we have mail
24 from the doctor to Barclays bank directing them to transfer
25 funds to Switzerland, that is the only thing we have, but

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2 what I would like --

3 THE COURT: I will permit it.

4 THE WITNESS: Will you please repeat the ques-
5 tion?

6 (Question read.)

7 THE COURT: Did you discuss with Barclays
8 bank whether or not transfers by you to Switzerland could be
9 discovered?

10 THE WITNESS: No, we never discussed that at all.

11 THE COURT: All right.

12 THE WITNESS: It was never a consideration.

103 13 Q Did you ever relate to them that you wished to
14 keep this hidden from the Internal Revenue Service?

15 A Absolutely not. It was never the intention or
16 the thought or the actual practice, for that matter.

17 Q Did there ever come a time during this period,
18 1966 through 1969, where you requested funds from relatives?

19 A When I requested funds?

20 Q Yes?

21 A Yes, in a sense, yes.

22 Q From which relative did you request funds?

23 A It was, in a sense, not a demand but it was an
24 awareness that I needed funds.

25 THE COURT: Did you get money from relatives

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during the period, instead of requesting or demanding them?

Q Did you obtain funds from your sister?

A Yes, sir, I did.

Q What were the circumstances surrounding the necessity for obtaining the funds from your sister?

THE COURT: It is not the necessity. The question is did he get them.

Q Did you get them?

A Yes, I did.

THE COURT: When and how much?

THE WITNESS: I got about \$8,000, up until about 1968, 1969.

Q Did you get it in one lump sum?

A No.

Q How was this money received by you?

A My sister would give me the money from time to time in small sums.

THE COURT: Currency?

THE WITNESS: Currency, sir?

THE COURT: Can you estimate that it aggregated \$8,000?

THE WITNESS: Yes.

THE COURT: When did it begin?

THE WITNESS: It began around 1965, 1966, maybe

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a year earlier.

Q Did this begin about the time you started having your marital problems?

A Yes, definitely.

Q Did you obtain any funds from your mother?

A Yes, I did.

Q When..and how much did you obtain from your mother?

A My mother gave me about \$15,000 and she started in -- that is, \$15,000 all told. She started when I got married in 1959 and this continued up until about 1968.

Q What would you estimate she gave you just for the period 1966 through 1968?

A It would be hard for me to make an exact estimate of that.

THE COURT: Was this also in currency?

THE WITNESS: Yes, it was, your Honor.

THE COURT: Small amounts from time to time?

THE WITNESS: Yes, sir.

THE COURT: What is the largest amount that you ever got from your mother in currency?

THE WITNESS: About \$400 or \$500.

THE COURT: What about your sister?

THE WITNESS: More or less the same.

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2 Q Did there ever come a time when your mother re-
3 quired money from you?

4 A Yes, there was.

5 Q When did this occur?

6 A My father passed away in December of 1966 and
7 his estate was --

8 THE COURT: Just when, not why.

9 THE WITNESS: Oh.

10 THE COURT: When?

11 THE WITNESS: From the time of my father's death
12 in December of 1966 and for the next months or year or so.

13 THE COURT: How much did you give your mother?

14 THE WITNESS: I can't say exactly, your Honor,
15 but it was several thousand dollars.

16 Q Was this in currency?

17 THE WITNESS: Some of it was, some of it was
18 not.

19 Q Did you give her during this period, 1966, 1967
20 and 1968 more than she gave you or did she give you more
21 than you gave her?

22 A Wait a minute. It didn't happen in that sequence,
23 your Honor. Maybe after my father's death --

24 THE COURT: I am not interested in the details.
25 You told us that you couldn't estimate how much your mother

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2 gave you in 1966, 1967, 1968 and 1969, but now you have told
3 us that you gave her more money during that period and I am
4 asking you whether you can say whether you gave her more
5 than she gave you or vice versa.

6 THE WITNESS: Excuse me, I misunderstood the
7 question. I gave her less than she gave me.

8 THE COURT: All right.

9 Q Was this money required by your mother due to
10 the fact that your father's estate was being --

11 MR. LAWYER: Objection.

12 THE COURT: The reason is immaterial. We are
13 just interested in the fact.

14 Mr. Appleman, will you be very much longer?

15 MR. APPLEMAN: No, I think after the recess
16 possibly 15 minutes.

17 THE COURT: Mr. Foreman, ladies and gentlemen,
18 suppose we stop for lunch now. Thank you. You may retire.

19 (The jury left the courtroom.)

20 THE COURT: Explain to me, Mr. Lawyer, about
21 these Searler checks because I get confused about the tax
22 situation.

23 MR. LAWYER: I am going to just simply withdraw
24 my objection to the whole thing. I really don't care about
25 it. However, if they are advances it is possible that they

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could have gone into the account anyway, when you think about it, and he could have drawn his own personal check to buy his ticket and so hypothetically speaking it might not make a difference.

THE COURT: Anyway, you don't require me to trace it out.

MR. LAWYER: No.

THE COURT: So there won't be a motion to strike as to Exhibit N.

All right, we will resume at 2 o'clock.

(Trial recessed until 2 p. m.)

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AFTERNOON SESSION - 2 P.M.

THE COURT: We don't seem to have any record of an exhibit 516.

MR. LAWYER: Yes, we were referring to a record not in evidence.

MR. APPLEMAN: It was a 3500 item. Actually he did not say it was evidence. He just referred to it. I didn't object because it corresponds to other items which are in evidence.

THE COURT: All right, Mr. Clerk, do you want to get the jury.

(Jury present.)

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R O B E R T L. W O L F, resumed.

DIRECT EXAMINATION CONTINUED

BY MR. APPLEMAN:

Q Dr. Wolf, during the period of 1966 to 1969 what did your practice consist of with regard to your time spent at the hospital as an employee, time to research and your time in the office for patients?

A During those years and afterwards the time allotted for my private practice was about one-third of my total working day. The other two-thirds of the time were spent in the hospital with research and teaching respon-

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sibilities. We were at that time and even now interested in developing certain tests.

MR. LAWYER: Objection.

THE COURT: Yes, sustained.

Q Just state what you did during this period of time.

THE COURT: He has already done that. He says one-third and two-thirds.

Q Did you receive any monies with regard to your research activities?

A Yes.

Q What monies did you receive with regard to your research activities?

A We received a wide variety of grants from various agencies.

MR. LAWYER: Objection. What money did he receive is the question and he is talking about money "we" received.

THE COURT: Just payments to Dr. Wolf.

Q Did you receive those grants for research activities?

A Yes, I did.

Q Were those monies paid directly to you or given to Mount Sinai Hospital?

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A The payments were made in two forms.

THE COURT: Were any of them made to you?

Q Directly?

A Yes, on occasion they were.

THE COURT: All right, then, I take it we are interested in the payments to Dr. Wolf.

MR. APPLEMAN: I think in order to clarify this--

THE COURT: No, I couldn't care less what payments were made to Mount Sinai, just payments to him.

Q Were payments made to you?

A On occasion.

Q What did you do with these payments?

A These payments either were sent straight to Mount Sinai with my endorsement or they were, I believe, on occasion returned to the sender so that we could make out the check directly to Mount Sinai.

Q In other words, you personally did not benefit from any of these grants received?

MR. LAWYER: I move that all of that be stricken.

THE COURT: Yes, the motion is granted. Strike it out.

Q Dr. Wolf, did you willfully and intentionally attempt to evade and defeat any part of your income tax for the year 1966?

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2 A No, I never did.

3 Q Did you willfully and knowingly attempt to evade
4 and defeat any part of your income tax for the year 1967?

5 A No, sir, not at all.

6 Q Did you willfully and knowingly attempt to evade
7 any part of your income tax for the year 1968?

8 A No, I did not.

9 Q Did you willfully and knowingly attempt to defeat
10 and evade any part of your income tax for the year 1969?

11 A No, I never did.

12 Q When you signed the 1966 return did you knowingly
13 or willfully subscribe this return with the fact that it was
14 false?

15 A I did not know it was false.

16 Q Can we make the same statements for the years
17 1967, 1968 and 1969?

18 A Yes, emphatically so.

19 Q Do you now know them to be false?

20 A There seems to be things that I didn't know at
21 that time that I had come to realize during this proceeding.

22 Q Did you consider them to be errors?

23 A Yes, they would seem to be errors, but by no
24 means are they -- do they emanate from myself.

25 MR. APPLEMAN: No further questions, your Honor.

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R. L. Wolf-cross

2 THE COURT: All right.

3 CROSS-EXAMINATION

4 BY MR. LAWYER:

5 Q Dr. Wolf, you don't dispute the fact that it is
6 your signature on Government exhibits 1, 2, 3 and 4, do you?
7 The tax returns, sir?

8 A I don't believe so, but I would like to see them.

9 Q I show you Government exhibit 1 in evidence. Is
10 this your signature, sir?

11 A That is my signature.

12 Q I show you Government exhibit 2 in evidence. Is
13 this your signature?

14 A Yes, that is my signature.

15 Q Is this your handwriting, the date April 10, 1968?

16 A Yes, that is my handwriting.

17 Q I show you Government exhibit 3, sir, is this
18 your signature?

19 A Yes, it is.

20 Q Is that your handwriting, the date April 10, 1969?

21 A That is correct.

22 Q I show you Government exhibit 4 in evidence. Is
23 this your signature?

24 A It is.

25 Q Is that your handwriting, the date April 10, 1970?

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R. L. Wolf-cross

2 A That is correct, but note the other date is four
3 days later by Mr. Edelstein.

4 Q I simply am asking about this date. Correct?

5 A That is correct.

6 Q You stated that you live in Danbury, Connecticut?

7 A Yes, sir.

8 Q Is that on Candlewood Lake?

9 A The house is on Candlewood Lake.

10 Q Who owns that house, you or your mother?

11 A My mother owns that house.

12 Q Was that part of the inheritance when your father
13 passed away?

14 A I do not know.

15 Q You saw a copy of the will that your father left,
16 Government exhibit 90 in evidence, did you not?

17 A Yes, sir.

18 Q In fact, sir, you are a witness to this will; is
19 that correct?

20 A That is true.

21 Q Did you hear Mr. Appleman ask other witnesses
22 whether it was not possible that you were included in the
23 will, that is, the property that your father left?

24 MR. APFLEMAN: I object, your Honor. I never
25 asked that question.

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THE COURT: I cannot remember and Mr. Lawyer says you did, and I don't know.

Q In substance, sir?

MR. APFLEMAN: In substance, I say definitely I did.

MR. LAWYER: I will withdraw the question.

THE COURT: All right.

Q Your father did not include you in the inheritance; is that correct?

A No, that is correct.

Q Was your father a medical doctor or a dentist?

A My father was a dentist.

Q When did you first become admitted as a doctor in the State of New York?

A May I refer to my memorandum on that?

Q Yes.

A I believe it was 1956.

Q How old are you now, Doctor?

A I am 45.

Q Do you have an apartment in New York now?

A I do.

Q Where is it?

A 399 East 72 Street.

Q Did you have that apartment during the years

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2 involved in this case, 1966 through 1969?

3 A Yes, I did.

4 Q How about your office -- is that a co-op or do
5 you rent space there?

6 A Which office do you mean, sir?

7 Q Your medical office in New York City, your private
8 practice office?

9 A The office at 20 East 74 Street is a co-op.

10 Q Do you own it?

11 A No, sir.

12 Q Who owns it?

13 A My mother owns it.

14 Q How long has she owned it?

15 A The office was a purchase from another physician
16 in 1958 or 1959 by my father.

105 17 Q Was it ever in your name?

18 A It was in my name for a short time.

19 Q What time?

20 A (No response.)

21 Q Was it in your name for any period from 1966 to
22 1969?

23 A During some of those years, yes, sir.

24 Q It originally was in your father's name?

25 A Yes, he bought it.

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2 Q Then in your name?

3 A Yes, sir.

4 Q And then in your mother's name?

5 A Yes, sir.

6 Q Did you sell it to your mother?

7 A Yes, sir.

8 Q For how much?

9 A I can't recall the exact figure but it was the
10 exact same price that my father bought it for.

11 Q How much was that?

12 A I believe it was about \$10,000 for the office
13 and a few thousand dollars more for the equipment.

14 Q Have you received the money?

15 A I beg pardon?

16 Q You stated your mother purchased the apartment
17 from you. Have you been paid?

18 A Yes.

19 Q What year?

20 A This was about a year ago.

21 Q Are you paying your mother rent now?

22 A Yes.

23 Q You heard Mr. Appleman ask various witnesses about
24 CGS, Columbia Grammar School?

25 A Yes.

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2 Q Your son attended Columbia Grammar School, didn't
3 he?

4 A He still attends Columbia Grammar School now.

5 Q Do you claim the tuition as a deduction, Doctor?

6 A I did not make out my income tax, sir. Mr.
7 Edelstein made it out.

8 Q You observed that Columbia Grammar School ap-
9 peared as a deduction?

10 A Yes, I am aware of that now.

11 Q Did you claim the tuition as a deduction, sir?

12 A No, I did not claim it in the way that you ap-
13 parently mean it.

14 Q Did you claim it at all in any way?

15 A No.

16 Q Do you recall your mother's testimony of last
17 week?

18 A You refer to a particular part of it?

19 Q No, sir, the entire testimony. You were here;
20 correct?

21 A Yes, sir, I certainly was.

22 Q Do you recall her estimating that she gave you
23 in cash over a ten-year period \$18,000?

24 A I recall that she said words to the effect that
25 she gave me between \$15,000 and \$18,000.

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Q And you estimate it to be \$15,000?

A Is that a question?

Q Yes.

A I estimate that she gave me about \$15,000.

Q Did you discuss it with your mother before she testified?

A Did I discuss what?

Q How much money you estimate you were given?

A Not specifically.

Q So she arrived at a figure of from \$15,000 to \$18,000 and you arrived at a figure of \$15,000 without any specific discussion?

A There was no specific discussion. We discussed the fact that she was going to testify, of course.

Q Did you discuss with your sister her testimony as to the estimate of \$8,000?

A As a specific issue?

Q Yes.

A No, sir.

Q So she testified and you testified and you both had the figure \$8,000 in mind as an estimate without any prior, specific discussion?

A We discussed her testimony in general.

Q You discussed the \$8,000 figure?

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1 A Probably was mentioned in the discussion, yes.

2 Q You heard your mother testify that you do not
3 support her; do you recall that testimony?

4 A I don't recall exactly what you mean. In which
5 years, under what circumstances?

6 Q Do you recall your mother testifying that you
7 do not support her?

8 A I don't recall that statement.

9 MR. APPLEMAN: I object to this line of question-
10 ing. He is not claiming his mother as a dependent.

11 THE COURT: I beg your pardon?

12 MR. APPLEMAN: He is not claiming is mother as
13 a dependent.

14 MR. LAWYER: I am not asking the question for
15 that reason.

16 THE COURT: No, I'll permit it.

17 Q Did you support your mother, sir?

18 A I gave my mother money from time to time when
19 the estate was tied up after my father passed away.

20 Q And the estate was probated in 1967; is that
21 correct?

22 A Yes, sir.

23 Q And your father passed away in December of 1966;
24 is that correct?

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2 A Yes.

3 Q So six months, approximately in the middle of
4 1967 the estate was no longer tied up; is that correct?

5 A I don't know if that is correct.

6 Q Let's look at the will, Government exhibit 90.
7 Would you look at it, sir, and tell us whether or not the
8 estate was in fact probated in May of 1967?

9 A I'm very sorry, Mr. Lawyer, I'm not quite educated
10 in reading --

11 Q Very well. In any event, the estate was no
12 longer tied up after several months in 1967; correct?

13 A I can't give you that information.

14 Q Without referring to the will, Doctor, how long
15 was the estate tied up?

16 A It was tied up for many months.

17 Q I show you Government exhibit 91 for identifica-
18 tion. I show you the very last page, which is numbered 12.
19 Is this your signature on page 12?

20 A Yes. May I see the exhibit, please?

21 Q Is this your signature, Doctor (indicating)?

22 A Yes, of course it is.

23 Q Now I show you the front. Is this an affidavit
24 that you wrote?

25 A Yes, it is.

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2 Q And you appeared before a notary public and you
3 signed this affidavit on February 21, 1967?

4 A It was notarized on that date.

5 Q Did you make the following statement, sir, in
6 this affidavit:

7 "Despite the fact that my mother was left certain
8 property by my late father, said property is not income-
9 producing and the income that she derives from his estate is
10 practically nil. It is therefore necessary for me to help
11 support her. My wife claims that I am giving my mother
12 \$125 a week for the purpose of showing the court that I have
13 increased expenses and obligations. I wish to point out
14 that" --

15 MR. APPLEMAN: Your Honor, I object. I don't
16 think there is any relevance to this hearing. This is
17 evidence from the matrimonial hearing.

18 THE COURT: No, there is a statement which the
19 doctor says he made under oath and it relates to the transfer
20 of money or not between him and his mother.. I think it is
21 relevant.

22 Q "My wife claims that I am giving my mother
23 \$125 a week for the purpose of showing to the court that I
24 have increased expenses and obligations. I wish to point
25 out that I started giving this money to my mother long before

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the present action was started and before I had any knowledge that these proceedings were even contemplated."

You made that statement?

A May I please see the affidavit?

Q Referring to paragraph 19 of the affidavit.

MR. APPLEMAN: Your Honor, I don't see any necessity to keep that out.

THE COURT: Are you going to use this on cross-examination?

MR. LAWYER: Yes, sir.

THE COURT: I will permit it.

A This is the statement that I made.

Q You did make that statement. In that statement, sir, you said that long before this affidavit was written you were giving your mother \$125 a week to help support her. How long before?

A May I see the affidavit, please? I was giving her money for many months before. My father was ill during a long period of time preceding it.

Q But he left an estate of a quarter of a million dollars in New York and Connecticut property?

A I do not know that to be true.

Q Did you hear your mother testify to that effect?

A She certainly did not testify to that effect.

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2 Q Did she not testify that he had an estate of
3 \$200,000, which is only \$25,000 short of a quarter of a
4 million?

5 A If that is the calculation, then I would certain-
6 ly agree with it, but I thought she said about \$200,000.

7 Q \$200,000. I will accept your figure.

8 Then you heard her testify he left \$200,000?

9 A Of course. There is no doubt about that. That
10 is typed up during the time you are talking about.

11 Q While your father was ill?

12 A Yes.

13 Q Can you estimate how many months you were given
14 \$125 a week support?

15 A Very many months. He was critically ill and --

16 Q For how many months is your best estimate that
17 you were giving your mother \$125 a week? An estimate, that
18 is all I am asking for.

19 A I believe you asked me two questions.

20 Q That is the only one.

21 A I said I gave her the money for many months
22 beforehand.

23 THE COURT: What does "many months" mean? Is
24 that more than a year?

25 THE WITNESS: No, less than a year.

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2 THE COURT: Less than a year?

3 THE WITNESS: Yes.

4 Q How many months all together?

5 A Approximately six months.

6 Q This would cover 1966 and 1967 then, is that
7 correct, late 1966 and early 1967?

8 A I have lost the time period involved.

9 Q Doctor, look at your affidavit, Government Exhibit
10 90 for identification. You signed this and you swore to it
11 on February 21, 1967; correct?

12 A Yes, we have established that.

13 Q You say that your father's estate was tied up
14 for many months until the will was probated?

15 A That is true.

16 Q That wasn't probated until the middle of 1967.
17 That alone is at least six months; is that correct?

18 A Yes.

19 Q If you gave her money prior to 1967 before your
20 father died that would add several month months; is that
21 correct?

22 A That is, is, of course.

23 Q Doctor, would you look at Government exhibit 8E.
24 In 1967 you reported only \$4,659 in taxable income; is that
25 correct?

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2 A You have the 1967 return?

3 Q Did you claim your mother as a deduction, by the
4 way?

5 A I think you can find that on the return.

6 Q Well, you tell us.

7 A I could tell you I did not.

8 What is your question, sir?

9 Q Did you claim your mother as a deduction for 1966
10 or 1967?

11 A I have answered that. I did not. I never did.

12 Q Did you in fact only report a taxable income of
13 \$4,659.58 for 1967?

14 A Yes, that is right.

15 Q Doctor, if you gave your mother \$125 a week --
16 that is \$500 a month and that is \$6,000 a year -- and you
17 didn't claim your mother as a deduction, where did the money
18 come from? It is more money than you reported, you would
19 agree?

20 A Yes, that is apparent. But, first of all, I did
21 not claim that I gave her \$125 each and every week.

22 Q Read your affidavit.

23 A That is only for the time after my father's
24 death. You went back to the preceding six months.

25 Q After your father died and until the will was

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2 probated?

3 A I believe you are talking about the preceding
4 six months also.

5 Q Look at your affidavit, paragraph 9.

6 A What do you wish me to look at?

7 Q How long after your father passed away in
8 December of 1966 were you giving your mother \$125 a week?

9 A I told you, for many months.

10 Q \$500 a month for many months; is that your
11 testimony?

12 A I clearly said so.

13 MR. LAWYER: I offer Government exhibit 91 only
14 for paragraph 19.

15 THE COURT: Any objection.

16 MR. APPLEMAN: I haven't seen it, your Honor..

17 THE COURT: All right, it's the paragraph that Mr.
18 Lawyer read.

19 MR. LAWYER: I made a photocopy of that particular
20 page. I am only offering it for that paragraph.

21 THE COURT: I think it might be better if we
22 use the photocopy.

23 MR. APPLEMAN: No objection, your Honor.

24 MR. LAWYER: Any objection to just putting in
25 the one page photocopy?

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2 MR. APFLEMAN: No objection.

3 THE COURT: Government exhibit 91 for identi-
4 fication as to paragraph 19 thereof is admitted into evidence
5 and instead of the original a photostatic copy of the page
6 containing paragraph 19 is to be marked. None of it is
7 admitted except paragraph 19.

8 MR. LAWYER: I didn't read two sentences from
9 paragraph 19, which if there is any argument about, I have
10 no objection.

11 THE COURT: All of paragraph 19 will be received.
12 (Government exhibit 91 is received in evidence.)

13 Q Doctor, do you have an idea whether your mother
14 had approximately \$10,000 to pay you for your office that
15 you sold to her if you also supported her?

16 A I do not know, sir, but surely you must realize
17 that she paid for it many years afterwards.

18 MR. LAWYER: He has answered the question.

19 THE COURT: Yes, Doctor, if there is anything
20 else that you want to say later you can ask me. I will take
21 it under advisement.

22 Q You first went to Mr. Edelstein for your tax re-
23 turn preparation in 1966; is that correct?

24 A Mr. Edelstein prepared my 1966 tax for the first
25 time.

xxx

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Q Did he prepare your 1970 return?

A Yes, he did.

Q Did he prepare your 1971 return?

A Yes, he did.

Q You stated that when you went up to his office he would always make you pay him before he would turn loose the return?

A Almost without exception.

Q Did you find this offensive at all?

A I found it a bit insulting, yes.

Q But you went to him in 1966, then you went back to him in 1967, you went back to him in 1968, back to him in 1969 and 1970 and 1971 and each time he treated you like this and you kept going; is that correct?

A Yes. He was insulting but not forbiddingly so.

Q How much did you pay him?

A When do you mean?

Q What is the most you ever paid him for doing your return?

A During what period of time?

Q From 1966 to 1971.

A I can't answer that with great accuracy but it probably is in the range of \$400 or \$500.

Q You heard him testify it was a range of \$250 to

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2 \$350?

3 A That did not encompass the time period that you
4 just defined, sir.

5 Q Very well. From 1966 to 1969, what was the most
6 you paid him?

7 A During those years I believe I paid him no more
8 than \$350, but I might be off by a few dollars.

9 Q You testified that Mr. Edelstein at no time asked
10 you about any other bank other than your Chemical bank
11 checking account; is that correct?

12 A Yes, that is true.

13 Q Did you volunteer any information about your other
14 bank accounts?

15 A I never had the opportunity to speak to him in
16 depth because he never gave me the chance.

17 Q But you went back to him year after year, is that
18 correct, even though he explained nothing to you about your
19 tax troubles? I'm sorry, about your tax returns.

20 A I don't quite understand what you mean.

21 Q You never volunteered any information of any
22 bank account other than the Chemical bank checking account?

23 A I always gave Mr. Edelstein all the information
24 that he wanted.

25 Q Whatever he asked for?

A Of course.

Q You didn't volunteer anything else?

A About what?

Q About other bank accounts, sir, or about other financial information if Mr. Edelstein didn't ask for it?

A No. He was my accountant. He was a certified public accountant and he would ask me for the information and I presumed it was correctly asked for, what he needed.

THE COURT: Did he ever ask you about any bank account other than the checking account at Chemical bank?

THE WITNESS: Did he ever ask me? Yes, he asked me if I had some savings accounts.

THE COURT: And you told him about those?

THE WITNESS: Yes, sir.

THE COURT: Did he ask you about any other checking accounts?

THE WITNESS: No, he never asked me for any other checking accounts.

THE COURT: Did you ever tell him about the Barclays bank account?

THE WITNESS: I believe I did, yes, sir.

Q You believe you did, Doctor?

A Does that indicate some skepticism?

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2 THE COURT: When did you tell him, Doctor?

3 THE WITNESS: He asked me, I believe -- oh, I
4 told him -- I am just trying to search for the context -- in
5 a conversation which we had in the last year or so.

6 THE COURT: In the last year?

7 THE WITNESS: Yes.

8 THE COURT: But at least until the end of 1970
9 you had not told him about the Barclays bank checking
10 account?

11 THE WITNESS: Not as such, but the deposits that
12 were deposited in the Barclays checking account for profes-
13 sional income were recorded and the number that he got in-
14 dicating my professional income.

15 Q Did you ever tell Mr. Edelstein or anyone that
16 all of your medical income both from your office and from
17 Mount Sinai was deposited in your Chemical bank checking
18 account? Did you ever tell anyone that?

19 A Beg pardon?

20 MR. LAWYER: May I ask it be read?

21 (Question read.)

22 A That it was deposited exclusively, do you mean?

23 Q Yes.

24 A I really can't answer. I don't recall.

25 Q Was all of your income deposited in your Chemical

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bank checking account?

A No, sir.

Q And in 1966 was all of your medical income deposited in your Chemical bank checking account?

A No, sir.

Q In 1967 was all of your medical income deposited in your Chemical bank checking account?

A No.

Q In 1968?

A No, it was not.

Q In 1969?

A No, sir.

Q Doctor, I want to read Government exhibit 125 in evidence to you, which is on your letterhead and dated February 23, 1970:

"To Mr. Ben Edelstein, Empire State Building, 350 Fifth Avenue, New York, New York.

"Dear Ben:

"Just a note to remind you that the total amount of money deposited in my checking account for the years 1965, 1966, 1967, 1968 reflects not only the total amount of money which I received from the practice of medicine but also deposits into this checking account on the checks which I received from my salary from the Mount Sinai Hospital and

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2 checks which I received from the sale of securities which are
3 deposited in this account in order to prevent deficits and
4 to be able to meet expenses, et cetera.

5 "I can account for every penny deposited in my
6 checking account for these years. On this basis there is no
7 discrepancy between the amount which I received and the amount
8 of money deposited. Furthermore, since I lecture a great
9 deal medical meetings I can account for every deduction during
10 these years for conventions, et cetera."

11 Did you write that letter, sir, Government exhibit
12 15?

13 A May I please see it?

14 Q Is this your signature at the bottom of Govern-
15 ment exhibit 15?

16 A Which question would you like me to answer?

17 Q Is that your signature, first?

18 A That is my signature.

19 Q You answer any question you want to answer.

20 THE COURT: Did you write the letter? I guess
21 that was the other question.

22 THE WITNESS: Yes, I did write the letter.

23 THE COURT: All right, next question.

24 Q Is the letter true?

25 A That letter was 100 percent true.

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2 Q Doctor, did you just testify that either in 1966,
3 1967, 1968 and 1969 -- that you did not deposit all of your
4 medical income in the Chemical bank checking account?

5 A Mr. Lawyer, may I please see the letter?

6 What is your question?

7 Q Is the letter true?

8 A The letter is true.

9 Q Is your testimony also true?

10 A My testimony is also true and I will tell you
11 how it is true.

12 Q May I have the letter back?

13 In Government exhibit 15 you used the expression,
14 sir, "My checking account, this checking account," and again
15 "my checking account," Different references. That is only
16 one account; correct?

17 A I cannot evaluate your question without seeing the
18 letter, sir.

19 The expression, "My checking account" is made.
20 "This checking account" is made. "My checking account" is
21 made," is correct.

22 Q All of those references refer to a single check-
23 ing account; is that correct?

24 A Yes, that is so.

25 Q That is the Chemical bank checking account; is

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2 that correct?

3 A That is so.

4 Q You didn't have the Barclays checking account
5 until December of 1968; is that correct?

6 A That is correct, sir.

7 Q You stated that you did not deposit all of your
8 money into your Chemical Bank checking account in 1968 for
9 either of the four years, for that matter; is that correct?

10 A That is correct, sir. You must recall that not
11 every deposit in the checking account was income.

12 THE COURT: Doctor, if you want to make an
13 explanation, I will permit it. The point is that it seems
14 to exclude savings accounts and it seems to be a reference
15 to only the Chemical Bank checking account.

16 THE WITNESS: Yes, sir. I am aware of that, sir.

17 THE COURT: Do you want to make an explanation?

18 THE WITNESS: Yes, I do, sir.

19 THE COURT: Go ahead.

20 THE WITNESS: This letter does not say what you
21 purport to say, Mr. Lawyer.

22 MR. LAWYER: I object if he is going to explain
23 it in a rambling conversation.

24 THE COURT: I will permit it. Go ahead.

25 THE WITNESS: The amount of money deposited in

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2 my checking account, in the Chemical checking account re-
3 flected not only deposits from taxable income but also
4 deposits which were unrelated to income and this amount of
5 deposits, in essence, offset the other deposits which were
6 taxable in my other account.

7 Q Did you show Mr. Edelstein those other accounts?

8 A I believe you asked me that. No, he didn't --

9 Q Did you show Mr. Edelstein at any time the
10 deposit tickets?

11 A Mr. Edelstein never asked for the deposit tickets.

12 Q Did you show Mr. Edelstein at any time your
13 cancelled checks?

14 A Yes, sir.

15 Q When?

16 A When he asked for them.

17 Q When did he ask for them?

18 A He asked for all of my cancelled checks about two
19 years ago and he received them.

20 Q Two years ago -- 1971?

21 A That is when Mr. Edelstein asked for those checks.

22 Q Dr. Wolf, you say you are 45 years old; correct?

23 A Yes, sir.

24 Q But you thought you felt that it was Mr. Edelstein's
25 responsibility to ask you about other bank accounts that he

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2 had no knowledge of?

3 MR. APPLEMAN: I object to "you felt."

4 THE COURT: I will permit it.

5 (Question read.)

6 A It was indeed Mr. Edelstein's responsibility
7 as my accountant and I gave him the information when he
8 requested it.

9 THE COURT: Let's go on and avoid arguments
10 with the witness, Mr. Lawyer.

11 MR. LAWYER: Yes, sir.

108 12 Q Dr. Wolf, I ask you to look at page 2 of the
13 indictment in this case.

14 A Do you want me to read it, sir?

15 Q No. You will observe in count 5 of the indict-
16 ment, sir, which refers to 1966, that you are charged with
17 omitting gross receipts of \$24,000.

18 A I see, that, yes.

19 Q Dr. Wolf, did it ever occur to you that you had
20 \$24,000 extra dollars in cash floating around on which you
21 had paid no taxes?

22 A It certainly never occurred to me, no, sir.

23 Q In 1967, referring to count 6 of the indictment,
24 sir, you see that you are charged with failing to report
25 \$22,000 in gross receipts.

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2 A I see the listing that you make reference to.

3 Q It never occurred to you, sir, that if that
4 figure is true that you had \$22,000 just floating around?

5 MR. APPLEMAN: Your Honor, I object to "that if
6 that figure is true." We don't know. It is for the jury
7 to decide.

8 THE COURT: Of course.

9 MR. LAWYER: That is why I said "if" --

10 THE COURT: This is cross-examination and I will
11 permit the question.

12 A This figure never came to my attention, sir, until
13 the indictment was handed to me now.

14 Q Not necessarily that figure. Assuming that in-
15 formation that is the evidence in this case is it true and if
16 you had another \$22,000 untaxed in cash, it never occurred to
17 you that you had that much money extra, sir?

18 A I don't believe I could answer that question be-
19 cause I don't understand what you are saying.

20 THE COURT: Let's go on to another topic. I
21 think it is principally argument.

22 Q Do you see that you are also charged in counts
23 7 and 8 with \$42,000 for each of those years that you failed
24 to report?

25 MR. APPLEMAN: I object.

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2 THE COURT: Yes, I will sustain the objection.
3 I think it is principally argument, but you can certainly
4 make the argument to the jury.

5 MR. LAWYER: Very well, your Honor.

6 Q Doctor Wolf, you testified about going to various
7 medical conventions at which you gave talks and that you
8 delivered papers; do you recall that testimony?

9 A Yes, I do.

10 Q In 1966 you went to Bogota, Columbia; is that
11 correct?

12 A Yes, sir, I am quite sure I did.

13 Q You went to Peru?

14 A I gave a lecture in Lima, Peru.

15 Q And Santiago, Chile? You gave a lecture?

16 A At the Catholic University, yes, sir.

17 Q And also in Argentina and in Brazil; is that
18 correct?

19 A At Dr. Jose's laboratory, that is correct.

20 Q You testified about those on direct when Mr.
21 Appleman was questioning you. Are those the same meetings?

22 A Yes, they are.

23 Q Were those conventions? Is that what you described
24 as conventions?

25 A It was a combination of conventions, invitive

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2 lectures and visiting professorial teaching responsibilities.

3 Q How many trips to those places did you make in
4 1966?

5 A I visited each of these places once.

6 Q But you were reimbursed for those trips; is that
7 correct?

8 A I received money for the purpose of making these
9 trips.

10 Q For expenses?

11 A Yes.

12 Q And that means you didn't lose any money, then,
13 in making the trip; is that correct?

14 A I'm quite sure I lost money in making the trip.

15 Q Did you claim deductions for those trips?

16 A You mean in the money that I presumed that I
17 lost?

18 Q You say you were reimbursed. Did you claim ded-
19 uctions at all?

20 A I believe deductions were claimed, yes.

21 Q So you have claimed deductions, Doctor, even
22 though you were reimbursed; is that correct?

23 A Yes, but the reimbursement was so stated.

24 Q I don't follow the answer. What I am asking --

25 A I deducted the trip as a business -- legitimate

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2 expense which I believe as of now nobody objects to, but the
3 money which I received for that trip was declared.

4 Q It was declared on your tax return; correct?

5 A It was in the money, yes.

6 Q So if you declared it on your tax return you
7 were claiming a deduction for it; is that correct?

8 A That is what I believe I said clearly.

9 Q At the same time you were reimbursed for it; is
10 that correct?

11 A I was reimbursed and the money which I was reim-
12 bursed was deposited to my accounts, yes, sir.

13 Q So you are saying you treated it as income; is
14 that correct?

15 THE COURT: If I understand the doctor correctly,
16 Mr. Lawyer, and he can tell us if I am right, he is saying
17 that he treated the reimbursement as taxable income and
18 reported it on his tax return.

19 Is that correct?

20 THE WITNESS: Yes, sir.

21 Q You have heard government agents testify that all
22 of your deductions that you claim were not challenged for
23 purposes of this case, did you not?

24 A I believe it has been testified that they don't
25 challenge any deduction.

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2 Q When did you open your Swiss bank account again?

3 A That was opened up in 1968.

4 Q And you testified, in essence, that you opened
5 this account up so that your wife couldn't get to the money?

6 A No, that is not true, Mr. Lawyer.

7 Q What did you testify to?

8 A I testified that considering the fact that my
9 son had run away from his mother to come to me on many oc-
10 casions and that he wanted to live with me and considering
11 the fact that my wife had told me that she was going to make
12 it impossible for this ever to happen by taking every penny
13 from me, that there would be no money left for my son's
14 education, for that reason I opened up the bank account.

15 Q 3500 miles away in Zurich you opened up an
16 account for your son's education; is that your testimony?

17 A It takes three and a half to four days by airmail.

18 Q Meanwhile you had five bank accounts in New York?

19 A Is that a statement or question?

20 MR. LAWYER: I withdraw it, whatever it was.

21 Q I show you Government exhibit 4 in evidence,
22 Doctor, your 1969 income tax return. Does that reflect a
23 loss from your medical practice for 1969? I refer you to the
24 figure \$5,534.54. Does it reflect a loss from your medical
25 practice for 1969?

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2 THE COURT: Is it 52 cents?

3 MR. LAWYER: I guess that may be a 2, yes.

4 A Mr. Edelstein has recorded under number 27, net
5 profit or loss, a loss of \$5,534.52.

6 Q So you were losing money, Doctor, after 20 years
7 of medical practice you were losing money in 1969; is that
8 it?

9 A I was involved, sir, in these horrendous and
10 emotionally destructive and economically destructive martial
11 dispute in which my son has run away from his mother and it
12 is indeed true.

109 13 Q Did you ever consider just giving up medical
14 practice since you were losing so much?

15 A Yes, I have.

16 Q Doctor, did you testify in the State Supreme
17 Court in an action, Wolf against Wolf?

18 MR. APFLEMAN: Your Honor, I object.

19 THE COURT: I am sure Mr. Lawyer understand my
20 ruling and that is it has to be related to the issued here
21 on trial.

22 MR. LAWYER: I understand it perfectly.

23 THE COURT: Of course. We are not going into the
24 merits or demerits of the dispute between the husband and the
25 wife.

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R. L. Wolf-cross:

2 Did you testify, Doctor, in the State Court?

3 THE WITNESS: Yes, sir, I have testified in State
4 Court.

5 Q Did you at one time testify that you gambled away
6 \$50,000 in money and that you didn't know where you gambled
7 it away?

8 A I beg your pardon?

9 Q Did you testify to that?

10 A I think you have asked me two questions.

11 THE COURT: Do you want to ask him a specific
12 question? The witness says you have asked him two questions.

13 MR. LAWYER: I didn't think I had. I am sorry.

14 Q Did you testify in the State Supreme Court, sir,
15 that you had gambled away \$50,000 in cash?

16 A No. I believe I testified that I gambled about
17 \$40,000.

18 Q Where did you gamble it away, Doctor?

19 MR. APPLEMAN: I think that is irrelevant, your
20 Honor.

21 THE COURT: No, I will permit it.

22 A It was gambled in various places because my wife
23 demanded money and --

24 THE COURT: No. he is just asking of the places
25 where you gambled. Just tell us the places if you can, and

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2 if you can't remember, say so.

3 THE WITNESS: The places were in Europe and in --

4 Q Where in Europe?

5 A And in Puerto Rico.

6 Q Where in Europe?

7 A Primarily in London.

8 Q What year was that?

9 A It was over several years, actually.

10 Q So you flew to London during several different
11 years?

12 A No, I did not.

13 Q Did you testify that you gambled away \$40,000 in
14 several different years?

15 A Yes, I did.

16 Q What years were they?

17 A I said they were in several years ranging around
18 1968 and 1969.

19 Q Was this all cash that you claimed to have
20 gambled away?

21 A There aren't many places that will take a check
22 in gambling, Mr. Lawyer.

23 THE COURT: Was it all currency, Doctor?

24 THE WITNESS: Yes, sir.

25 THE COURT: All right.

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R. L. Wolf-cross

2 Q Doctor, during 1966, where was the bulk of your
3 income from, medical practice or elsewhere?

4 A I would have to see my income tax return, sir.

5 Q In 1966, sir, from what source or sources did
6 you derive the bulk of your income?

7 A Mr. Lawyer, if I understand this income tax
8 return properly, my income was derived almost exactly equally
9 from two sources.

10 Q What were they?

11 A One source is my wages from Mount Sinai Hospital
12 and the other source is other income.

13 Q And they are almost equally divided?

14 A Within a few percentage points.

15 Q How about for the year 1967?

16 A In 1967 there was a slight increase in my wage
17 and salary income as compared to my total other income.

18 Q The question is: From which source did you re-
19 ceive the bulk of your gross income, not after taxes, but
20 the gross of your income, period?

21 A I am a bit confused. I received \$8,400 from my
22 wages and salary and about \$7,300 from my other income.

23 Q You have heard the evidence in this case, Doctor.
24 Is it still your contention that you received that altogether
25 or are you talking about taxable income that you reported?

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A I am reading from the 1967 return under income, lines 5 and 6.

Q What is your recollection as to where received the greatest amount of money from in 1967, Doctor, without regard to the return?

A Is this before taxes or after taxes?

Q Before taxes?

A Well, for the one source of income per se it would be the Mount Sinai Hospital.

Q You received more money from Mount Sinai Hospital than you did from your office practice proceeds?

A Yes, exactly. I am telling you that.

Q Is that true for 1968 as well?

A I am talking about 1967.

Q Is that also true for 1968? We are moving on.

A Is that another question?

Q Yes, not with reference to your return, but what was your own recollection?

A I would just be hazarding a guess, Mr. Lawyer.

Q How about for 1969?

A That in turn would also be a guess. I could look it up. I could look it up right here.

MR. LAWYER: May this be marked as Government exhibit 92 for identification, please.

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xxx

(Government exhibit 92 marked for identification.)

Q I show you Government exhibit 92 for identification, page 5 thereof. Is this your signature on page 5, sir?

A Yes, that looks like my signature.

Q And you swore to this, sir, on October 16, 1969?

A That is the date of the notary.

Q This is an affidavit; is that correct?

A I haven't seen it. Should I look at it?

Q This is an affidavit; is that correct, sir?

A This is called a reply affidavit, that is correct.

Q Now, sir, I refer you to a paragraph on the first page of your affidavit, Government exhibit 92 for identification, to the sentence which begins:

"The salary paid to me by the hospital has for the past three years constituted the bulk of my income."

Do you see that remark?

A It is clearly in front of me, sir.

Q Do you see it?

A Yes, I see it. It is right in front of me.

Q Was that remark accurate?

A I believe that the testimony and the figures support that remark.

Q Doctor, do you consider this to be accurate?

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2 A Yes, Mr. Lawyer, I do.

3 MR. LAWYER: I am going to offer this.

4 THE COURT: Show it to Mr. Appleman.

5 Just the part you read Dr. Wolf.

6 MR. LAWYER: Yes, sir, and I have a copy of that
7 page.

8 MR. APPLEMAN: I think he is taking it out of
9 context. I think the whole paragraph is necessary.

10 THE COURT: Do you have any objection?

11 MR. LAWYER: No.

12 THE COURT: What is the paragraph? Is it numbered?

13 MR. LAWYER: It is not numbered but it is the
14 fourth paragraph of the first page and it spills over to the
15 second page.

16 MR. APPLEMAN: One line on the second page.

17 THE COURT: We will mark the copy and if it
18 becomes necessary we can block out the parts of it that aren't
19 admitted, so the only part admitted is that identified on the
20 record.

21 xxx (Government exhibit 92 received in evidence.)

22 THE COURT: Suppose we take a few minutes recess
23 now. Mr. Foreman, ladies and gentlemen of the jury, suppose
24 you retire to the jury room and we will rest for a few
25 minutes.

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R. L. Wolf-cross

(The jury left the courtroom.)

THE COURT: Is this the last witness for the defendant?

MR. APPLEMAN: I have one more witness.

THE COURT: Long or short?

MR. APPLEMAN: Short.

THE COURT: Mr. Lawyer, will you be very much longer?

MR. LAWYER: No, sir.

THE COURT: Will you have any rebuttal?

MR. LAWYER: I don't think so, but I don't know. I couldn't go forward today, but I don't know until I hear this last witness.

THE COURT: But he will be very short.

MR. LAWYER: Yes.

MR. APPLEMAN: Then can I have the last witness tomorrow morning? I think we would be able to complete the direct testimony within a half hour, possibly, and I would like to have both done at the same time. I don't think there should be any break in his testimony.

MR. LAWYER: I won't be another ten minutes with this witness and it is only 3:20.

THE COURT: Let's try. If we have to, if worst comes to worst, we might have to sit a few minutes longer.

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R. L. Wolf-cross

2 MR. APFLEMAN: All right. The witness is here.

3 (Recess.)

4 (Jury present.)

5 Q I show you Government exhibit 71B in evidence
6 and specifically I refer to a check numbered 54286 bearing a
7 day of May 13, 1968 and ask you whether or not this is your
8 signature on the back of it, that is, the endorsement?
9 I am asking you about the signature?

10 A May I please look at the exhibit?

11 That is my endorsement, and my signature.

12 Q I show you a second check on 71B in evidence,
13 specifically a check numbered 58768 and dated August 9, 1968
14 and I ask you whether your signature, that is your endorse-
15 ment, appears on that check?

16 A Yes, Mr. Lawyer, that is my signature.

17 MR. LAWYER: For the record, 71B refers to 1968
18 checks from International Telephone and Telegram.

19 Q Dr. Wolf, did you cash those two checks?

20 A May I please have the checks?

21 Q Yes.

22 A I really don't know, Mr. Lawyer.

23 Q Did you hear Mrs. Milcznski state that you would
24 cash various checks and she cashed various checks for you at
25 your direction from time to time?

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R. L. Wolf-cross

2 A Yes.

3 Q And you heard the Chemical Bank official testify
4 that the various checks showed to him were cashed across the
5 counter?

6 A No, I don't recall that at all.

7 Q You don't recall him testifying to that?

8 A I recall him testifying that some checks were
9 cashed, but I believe you are trying to state that these
10 checks definitely were cashed.

11 MR. LAWYER: Your Honor, this is a rambling
12 answer.

13 THE COURT: Doctor, just answer the question.

14 Q Do you recall the testimony of the Chemical Bank
15 official to the effect that checks were cashed across the
16 counter?

17 A Yes, I do recall that.

18 Q Did you ever cash checks from patients, Doctor,
19 without depositing those checks?

20 A Yes, sir.

21 Q Doctor, I will read to you a line again from
22 Government exhibit 15, which is the letter dated February
23 23, 1970 to Mr. Edelstein:

24 "Dear Ben:

25 "Just a note to remind you that the total amount

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R. L. Wolf-cross

2 of money deposited in my checking account for the years 1965,
3 1966, 1967 and 1968 reflects not only the total amount of
4 money which I received from the practice of medicine but also
5 deposits into this checking account of the checks which I
6 received for my salary from the Mount Sinai Hospital..."
7 et cetera.

8 Would you agree that if you cashed the checks
9 then you didn't deposit them in your Chemical Bank account;
10 isn't that correct?

11 A I beg pardon? I don't see what that has to do
12 with what you read.

13 THE COURT: If you got currency for the checks
14 and they were checks for medical fees, Mr. Lawyer is asking
15 isn't that entirely inconsistent with the statement that all
16 medical income was deposited in your bank accounts?

17 THE WITNESS: No, sir, it is not inconsistent
18 because the checks that were cashed for cash would be placed
19 in my safe deposit box which eventually would then be deposited
20 into one of my bank accounts.

21 Q So you would cash the checks, put the money in
22 your safe deposit box, take it out of the safe deposit box
23 and then put it in the bank; is that correct?

24 A Yes, that is correct.

25 MR. LAWYER: Your Honor, I have no more questions.

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R. L. Wolf-redirect

2 THE COURT: All right, Mr. Appleman.

3 REDIRECT EXAMINATION

4 BY MR. APPLEMAN:

5 Q Mr. Lawyer is referring to 1968. Was there any
6 large cash deposits made by you to any of your checking
7 accounts then?

8 A Yes, there were.

9 Q To what account was that large cash deposit made?

10 A It was a large deposit to the checking account,
11 cash deposit to the checking account at Barclay's Bank.

12 Q That eventually the sums were deposited?

13 A Yes, of course.

14 Q What was the purpose of cashing these checks?

15 A The purpose of the cashing of the checks --

16 MR. LAWYER: I am going to object to the purpose.

17 THE COURT: I will permit it.

18 A The purpose of cashing the checks was to transfer
19 the money to the bank account in Switzerland in order to
20 secure my son's future education.

21 Q And in other words, you wanted to hide it from
22 your wife; is that correct?

23 A No. No, I wanted to insure it for my son for his
24 future use.

25 THE COURT: Doctor, couldn't you do that more

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R. L. Wolf-redirect

2 conveniently by depositing the check in Barclays Bank rather
3 than by going through all this business of getting the
4 currency, of putting it in the safe deposit box and then
5 withdrawing it from the safe deposit box and putting it in
6 Barclays Bank?

7 THE WITNESS: It might have been one that way,
8 your Honor, but it would not have achieved the desired result
9 of insuring it for my son.

10 THE COURT: All right.

11 Q You stated that your father purchased your office
12 located at 20 East 74 Street for you; is that correct?

13 A Yes. No, excuse me. He purchased the office
14 himself.

15 Q He purchased the office himself for your use?

16 A Yes, I did use it.

17 Q During his lifetime did he give you any other
18 sums of money?

19 A Yes, he did.

20 Q How much would you estimate he gave you during
21 his lifetime?

22 MR. LAWYER: Objection.

23 THE COURT: Sustained.

24 Q How much money did he give you during his life-
25 time?

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R. L. Wolf-redirect

MR. LAWYER: Same objection.

THE COURT: Sustained.

Q Did your father give you any money in 1966?

A Yes, he did.

Q How much money did he give you in 1966?

A He gave me approximately \$1,000 or \$2,000.

Q Did he give you this in one lump sum?

A No, he did not.

Q Did he give it to you in currency?

A He gave it to me in currency. He gave it to me in smaller amounts more frequently.

Q What was the largest amount he ever gave you in 1966?

A About \$300 or \$400.

Q Mr. Lawyer was making reference to sources described as the bulk of your income. Did you include there in the grants you received from the different institutions for work you were performing?

A On my individual income tax form?

Q Yes.

A No, I did not.

Q Did you take that into consideration in considering the amount of time you spent with regard to research?

MR. LAWYER: I object, your Honor. He didn't

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R. L. Wolf-redirect

2 include it on his return so it is irrelevant.

3 MR. APFLEMAN: The money was received for work
4 he was performing.

5 THE COURT: The government hasn't made a point
6 about it.

7 MR. APFLEMAN: He brought the point out about
8 the amount of time spent.

9 THE COURT: I don't think that has anything to
10 do with it.

11 Q What did Mr. Edelstein do for you in exchange
12 for the \$350 a year you paid him?

13 MR. LAWYER: Objection.

14 THE COURT: Sustained.

15 Q Sir, why did you gamble?

16 A There was a great ambivalence in my mind in
17 those days. I contested the separation of my wife because
18 I loved her and I contested the divorce from my wife because
19 I continued to love her. She indicated to me that if I have
20 a lot of money she might consider --

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21 MR. LAWYER: Objection.

22 THE COURT: I will permit this in view of the
23 testimony you brought out about the fact that he gambled
24 and lost \$40,000 in currency.

25 All right, now, why did you do it -- weakness?

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R. L. Wolf-redirect/recross

2 THE WITNESS: She said to me that if I had more
3 money she would consider a reconciliation.

4 THE COURT: It was an attempt to get money to
5 please her?

6 THE WITNESS: Yes, to win her back.

7 THE COURT: All right.

8 MR. APFLEMAN: No further questions.

9 THE COURT: Anything else, Mr. Lawyer?

10 MR. LAWYER: Yes, sir.

11 RECROSS-EXAMINATION

12 BY MR. LAWYER:

12 Q You said that your father gave you money in
14 1966?

15 A I did, sir.

16 Q That is the year he was very ill; correct?

17 A Yes, sir.

18 Q That is the year he passed away?

19 A He passed away in December of 1966.

20 Q That is the year you started giving your mother
21 money as well?

22 A Yes.

23 Q So your father was giving you money, you were
24 giving your mother money and your mother was giving you
25 money?

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R. L. Wolf-recross

2 A At various points in time, but not simultaneously.

3 Q You stated that you cashed these checks in 1968
4 which I showed you so you could deposit them in the Swiss
5 account for your son; correct?

6 A I do not admit to that until I see the check.
7 May I see it, please?

8 MR. LAWYER: I will just withdraw the question.

9 Q Did you also cash checks in 1966 and 1967 before
10 you broke up with your wife? Is that correct?

11 A Beg pardon?

12 Q You cashed checks in 1966 and 1967 as well;
13 isn't that correct?

14 A Not before I broke up with my wife.

15 Q Did you cash checks in 1966?

16 A In 1966? That is when she left me, sir.

17 THE COURT: Did you cash checks in 1966?

18 THE WITNESS: A few checks, yes.

19 Q Did you cash checks in 1967?

20 A Yes, that has been shown clearly.

21 Q In 1968 you cashed checks?

22 A Of course.

23 Q And 1969 you cashed checks?

24 A Without doubt.

25 Q So if you cashed them they couldn't have gone

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R. L. Wolf-recross

2 into your Chemical Bank account, could they?

3 A Nobody claimed that they did go into my Chemical
4 Bank account.

5 MR. LAWYER: No more questions, your Honor.

6 THE COURT: Mr. Appleman?

7 MR. APPLEMAN: Thank you, Doctor.

8 THE COURT: You may step down.

9 Next witness.

10 (Witness excused.)

11 MR. APPLEMAN: May I please approach the bench?

12 THE COURT: Yes.

13 (At the side bar.)

14 MR. APPLEMAN: I wish to place on the record
15 that my next witness is going to be an expert witness, a
16 CPA, a former Internal Revenue Service Agent by the name of
17 Joseph Gallo. He is present in the courtroom.

18 MR. LAWYER: It is my understanding that he is
19 not going to testify about anything but due diligence.

20 MR. APPLEMAN: Right. He is going to testify on
21 the fact based on the information, that information sub-
22 mitted to Mr. Edelstein on the work sheets, submitted by
23 Dr. Wolf to Mr. Edelstein for preparation of his returns,
24 that a CPA would not properly prepare an accurate return
25 from that information. That is, a CPA is bound by certain

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2 rules and regulations. I will try to bring it out on direct
3 testimony.

4 MR. LAWYER: He is going to give an opinion as
5 to Mr. Edelstein.

6 MR. APPLEMAN: Give an opinion as to the work
7 sheets in evidence.

8 MR. LAWYER: That is not proper evidence, for an
9 expert.

10 (In open court.)

11 THE COURT: I am afraid we will have to take a
12 few minutes on a question of law. You may be excused and
13 retire to the jury room for a few minutes.

14 (The jury left the courtroom.)

15 THE COURT: Now, Mr. Appleman, tell me more of
16 what that is.

17 MR. APPLEMAN: Mr. Gallo is a certified public
18 accountant and a former employee of the Internal Revenue
19 Service for approximately 10 to 15 years. He is well quali-
20 fied to testify with regard to the proper preparation of
21 income tax returns. Mr. Gallo at the present time prepares
22 several hundred income tax returns each year. This is his
23 present occupation. He is going to testify that with regard
24 to the information which was submitted to Mr. Edelstein by
25 Dr. Wolf and with regard to the canons of ethics with which

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2 certified public accountants must practice in this state that
3 a CPA could not properly prepare an income tax return
4 based on that information.

5 THE COURT: Why not -- because the taxpayer
6 didn't give him enough information?

7 MR. AFFLEMAN: Number one, the taxpayer did not
8 give him enough information and he should have required --

9 THE COURT: No, I don't think so because the
10 taxpayer is under the obligation to give full and accurate
11 information to the accountant. It is not the accountant's
12 function to take over the responsibility of the taxpayer.
13 I can read you the charge that I will give to the jury
14 and since this bears on some of your suggested language I
15 would have to read it to you anyway:

16 A taxpayer may delegate the responsibility
17 for the preparation of his return to a person who he has
18 reason to believe is competent to handle such matters such
19 as a certified public accountant. The mistakes of such a
20 person are not attributable to a taxpayer. If the accountant
21 makes a mistake the taxpayer is not to be blamed. However,
22 the taxpayer is required to give or make available accurate
23 information to the accountant with respect to his income.
24 He cannot blame or shift the responsibility to the person
25 he retains if he deliberately withholds from that person

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2 such vital information. Evidence has been introduced
3 showing that the defendant did not prepare his tax returns
4 and that they were prepared for him by Mr. Benjamin
5 Edelstein who is qualified to prepare federal income tax
6 returns for others. If the defendant provided Benjamin
7 Edelstein with full information as to his income during the
8 year and the defendant then adopted, signed and filed the
9 return for himself as prepared by Edelstein without having
10 reason to believe that it was not correct, then you should
11 find the defendant not guilty.

12 If, on the other hand, you find beyond a reason-
13 able doubt that the defendant willfully and knowingly did
14 not provide full and complete information to Edelstein or
15 that he knew the return as prepared by Edelstein was not
16 correct and substantially understated the tax liability,
17 then you should not acquit the defendant simply because he
18 did not prepare the return himself but rather had it prepared
19 for him by another.

20 And I cannot believe that a taxpayer can come
21 in and say "My accountant, who prepared the returns, didn't
22 ask me for all the information," when it is the taxpayer's
23 duty to give all the information to the accountant, so I am
24 not going to permit it.

25 MR. APPLEMAN: The word deliberately, "I think,

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2 is very important to us, and I think that Mr. Gallo can show
3 that an accountant could not properly prepare this return
4 less all the information was given to him, so therefore it
5 cannot be deliberate on a taxpayer's part.

6 THE COURT: Of course the taxpayer may not have
7 given him full information. It is the taxpayer's duty, not
8 the accountant's duty. It is the taxpayer's duty.

112 9 MR. APPLEMAN: It is the accountant's duty when
10 he signs a return under the cannons of ethics with regard to
11 Circular 230 and with regard to the cannons of ethics under
12 the American Institute Certified Public Accountants, I am
13 led to believe from Mr. Gallo that he has a certain function
14 to ascertain the propriety of the return, which was not done
15 in this case.

16 THE COURT: That is what the jury is to pass on
17 and it doesn't depend on whether or not I believe Mr. Gallo.
18 I happen not to believe him and I think it is nonsense, but
19 I am not excluding it because it is nonsense. I am excluding
20 it because it impinges on the function of the jury. I have
21 read you what I am going to charge the jury.

22 Now, Mr. Appleman, you may make an offer of
23 proof unless you think what you have already said is suf-
24 ficient to protect the record.

25 MR. APPLEMAN: I think what I have said is

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2 enough to protect the record and I think at this point, then
3 is what we will do is to rest, the defense will rest.

4 THE COURT: All right.

5 MR. APPLEMAN: Your Honor, excuse me for one
6 minute, please.

7 (Pause.)

8 MR. APPLEMAN: Your Honor, the defense will
9 rest, then.

10 THE COURT: All right.

11 MR. APPLEMAN: Will someone please go in and
12 tell Mr. Gallo that he will not be testifying?

13 THE COURT: Then, Mr. Lawyer, you have a re-
14 buttal witness tomorrow?

15 MR. LAWYER: I doubt very much, your Honor, but
16 in any event, I can't go ahead today. But my feeling at this
17 time is that I will not have a rebuttal witness.

18 THE COURT: All right, let's bring the jury in
19 and I will excuse the jury until tomorrow morning at 9:30 and
20 then we can go to work for a little while.

21 (Jury present.)

22 THE COURT: Mr. Foreman, ladies and gentlemen,
23 of the jury, the completion of Dr. Wolf's testimony completes
24 the case for the defendant. The defendant has rested, which
25 is the technical expression for the side has completed its

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2 case. That means that we can have the closing arguments of
3 counsel tomorrow morning and I can submit the case to the
4 jury for its decision along with and after my instructions.

5 We haven't time, of course, to take up the
6 closing arguments today. I am going to excuse the jury
7 until 9:30 tomorrow morning with my usual instructions not
8 to discuss the case amongst yourselves or with anybody else.

9 Thank you very much. You may retire and we
10 will meet again here tomorrow morning.

11 (The jury left the courtroom.)

12 THE COURT: Mr. Appleman, how much time do you
13 want for summation?

14 MR. APFLEMAN: I would imagine approximately 30
15 to 45 minutes, your Honor, and hopefully shorter, but just
16 to make sure I am covered I will ask for that amount of
17 time.

18 MR. LAWYER: I would like an hour to an hour and
19 15 minutes, your Honor.

20 THE COURT: Let me pass on the requests to
21 charge so we can have that out of the way.

22 First, do you want to make any further motions?
23 We don't quite know whether the government is going to have
24 a rebuttal witness. You don't have to, but let's not forget
25 it tomorrow.

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2 MR. APPLEMAN: No, your Honor.

3 THE COURT: When we find out definitely whether
4 the government is going to have a rebuttal case, then perhaps
5 you can do it. We can do it before we bring in the jury
6 tomorrow morning.

7 MR. LAWYER: I will have a supplemental request.
8 Specifically I will request a charge that a willful disregard,
9 that is, you cannot close your eyes to your own obligations.

10 THE COURT: Can you get any authority for it?

11 MR. LAWYER: Yes. I will bring it up to your
12 chambers tonight.

13 THE COURT: Thank you, yes, I wish you would.

14 I will take the government's requests to charge
15 first. When I say I will give a charge I don't mean that I
16 will give it in the words requested but I mean I will give
17 it in substance.

18 Request number one, yes, but the last part of
19 the first paragraph: "The object is to secure the enforce-
20 ment of criminal sanctions set up by Congress."

21 Number two, yes. Number three, yes. Number
22 four, yes. Number five, yes. Number six, yes. Number 7,
23 yes. Number 8, yes, but considerably modified and shortened.
24 Number 9, yes. Number 10, yes, as modified. I strike out
25 the last sentence of request number 10. Number 11, yes,

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2 modified and shortened. Number 12, yes. Number 13, yes.
3 Number 14, yes, as modified. I omit the third sentence and
4 the words "for that reason" in the next sentence. Number 15,
5 yes, but modified as to three and four because an essential
6 element of the return must be that the return be in fact
7 incorrect, and this doesn't seem to have that essential
8 element in it.

9 Let's see how I put it: The essential elements
10 of this offense, that is, the last four counts, that the
11 defendant made and subscribed to the return, that the re-
12 turn contained a written declaration that it was made under
13 the penalties of perjury, that the return for the year was
14 not correct as to every material matter, and, fourth, that
15 in signing the tax return the defendant acted willfully and
16 that he knew at the time he signed the return that it was
17 not true and correct as to every material matter.

18 Number 16, no, and 17, no, because there is no
19 dispute about it in this case. I have just charged that
20 the first elements there is not dispute about. I mean, you
21 can look at the returns. The signature is admitted and the
22 document itself shows that it contains the written declara-
23 tions.

24 Number 18, no. Number 19, no except that I
25 cover it elsewhere as I go into the element of willfulness..

1 mceg 188

2 Number 19A, yes, and I have read you the charge
3 that I am going to give on that.

4 Number 20, yes, as modified. I use my own form
5 of words, but I leave out the third sentence, the last
6 sentence in the first paragraph of request number 20.

7 Request number 21, no.

8 Request number 22, yes as to all those requested.

9 Now we take the defendant's requests to charge.
10 Number one, the first paragraph, yes; the second paragraph,
11 no; the third paragraph, yes.

12 Number two, the first paragraph, no; the second
13 paragraph, yes; the third paragraph, yes; the fourth paragraph,
14 no.

15 The defendant's supplementary request to charge
16 will not be given. No.

17 Then there is a second supplementary request to
18 charge about the testimony of an accomplice and I don't think
19 that is an appropriate charge in this case. Who is supposed
20 to be the accomplice?

21 MR. APPLEMAN: Mrs. Milcznski.

22 THE COURT: Do you think she is an accomplice,
23 Mr. Lawyer? She didn't sign the return.

24 MR. APPLEMAN: She helped allegedly falsify the
25 return. If her testimony is accurate, she stated that she

1 meeg 189

2 falsified the records and that she didn't report her own
3 income.

4 MR. LAWYER: Obviously her own income has
5 nothing to do with this.

6 THE COURT: No.

113 7 MR. LAWYER: She couldn't be an accomplice on
8 counts 5 through 8 either because those are false statement
9 counts and she did not sign the return.

10 My only question is whether conceivably she is
11 an accomplice on counts 1 through 4.

12 THE COURT: Is it safer to give it? I am in-
13 clined to believe you on the last four counts.

14 MR. LAWYER: I would cause some research to be
15 done tonight and I will give my own opinion as to whether
16 it is applicable as to counts one through four, your Honor,
17 and we could settle it in the morning.

18 THE COURT: All right.

19 Mr. Appleman, it seems like a kind of close
20 question to me. She didn't have anything to do with the
21 accountant, really, except giving him the work sheets.

22 MR. APPLEMAN: Your Honor, I will withdraw that
23 request. I will make it easier on everyone. I will cover
24 it on summation anyway with regard to what she did and her
25 activities.

1
2 MR. LAWYER: I would wonder why the defendant
3 would want such a charge anyway.

4 THE COURT: An accomplice charge is usually,
5 at least in my opinion -- I may not be right -- I think it
6 is usually more helpful to the government.

7 MR. LAWYER: I think that is right.

8 MR. APPLEMAN: I will withdraw that.

9 THE COURT: You remember the standard form goes:
10 It should be weighed with caution, but if you feel that they
11 bared their breast before you and gave evidence because
12 they decided, having been caught, to come clean and tell the
13 truth, then you have an adequate basis for a finding of
14 guilty.

15 MR. LAWYER: It negatively admits the offense.

16 THE COURT: Yes, so I am certainly not here to
17 give legal advice but --

18 MR. APPLEMAN: I will withdraw that.

19 THE COURT: -- but I am inclined to think that
20 is probably wise.

21 There is a handwritten request to the charge
22 which was handed me really in response to my suggestion that
23 since I was going to state in certain portions of the con-
24 tention of the government I wanted to give the defendant's
25 contention too. Mr. Lawyer, you haven't seen this. Do you

1 mceg 191

2 have a copy of it, Mr. Appleman?

3 MR. APPLEMAN: I think I do have a copy, your
4 Honor.

5 THE COURT: If you don't, I will make it part
6 of the record and you can look at it right now and I have
7 written in the margin what I am going to do with it.

8 Now, Mr. Clerk, will you mark as a court exhibit
9 the government's requests to charge.

xxx 10 (Court exhibit 1 was marked.)

11 THE COURT: And mark as another court exhibit the
12 defendant's voir dire requests and requests to charge, which
13 are part of the same document.

xxx 14 (Court exhibit 2 is marked.)

15 THE COURT: As the next court exhibit mark the
16 defendant's supplementary requests to charge.

xxx 17 (Court exhibit 3 was marked.)

18 THE COURT: And as the next court exhibit,
19 another supplementary request to charge, this being the
20 accomplice request which has been withdrawn.

xxx 21 (Court exhibit 4 was marked.)

22 THE COURT: And as the next court exhibit a one-
23 page handwritten sheet of requests with my rulings in the
24 margin opposite each paragraph and counsel can inspect it
25 when we rise and see what I am going to do with it.

1 mceg 191A

xxx 2 (Court exhibit 5 was marked.)

3 THE COURT: All right, it looks, then, as if we
4 will submit the case to the jury tomorrow morning.

5 (Trial recessed until November 27, 1973 at
6 9:30 o'clock A. M.)

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2 United States of America

3 -vs-

73 Cr. 486

4 Robert L. Wolf

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New York, New York

7

November 27, 1973--9:30 a.m.

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[Trial resumed]

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9

THE COURT: Mr. Lawyer, I am sorry that your labor

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is lost. I am not inclined to give this charge. I think

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I will have to decline it. I looked at the cases and they

12

are not cases that are similar to the one on trial. And

13

also at the conclusion of it you suggest, really, what I

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have called charging on the evidence, that is, if you find

15

in this case certain facts then you will do certain things,

16

which I normally don't do. Maybe if I had longer to think

17

about it I might have reached a more profound result.

18

MR. LAWYER: I understand.

19

THE COURT: You remember the charge that I read

20

yesterday on Mr. Edelstein, relying on an accountant?

21

MR. LAWYER: Yes, delegation.

22

THE COURT: I really think that covers most of

23

your point.

24

MR. LAWYER: Yes.

25

THE COURT: Mr. Clerk, would you mark this as

1 mcds 2

2 the next Court Exhibit.

xx

3 [Court Exhibit 6 was marked]

4 MR. APPLEMAN: After overnight consideration of
5 that charge with regard to Mr. Edelstein which you read to
6 us I respectfully withdraw objection.

7 I wish at this time to renew my motion for a
8 directed verdict of acquittal.

9 MR. LAWYER: The Government has no rebuttal and
10 we rest again.

11 THE COURT: All right.

12 MR. APPLEMAN: I move for a directed verdict of
13 acquittal based on the fact that there has been insufficient
14 evidence to prove that Dr. Wolf knowingly, willfully and
15 deliberately did the acts for which he has been indicted
16 or knowingly signed the false documents.

17 THE COURT: I feel obliged to deny the motion.

18 MR. APPLEMAN: May I renew one further motion?

19 THE COURT: Yes.

20 MR. APPLEMAN: With regard to the leads doctrine
21 in the Holland decision, and you denied that motion, I would
22 like to renew that motion at this time also.

23 THE COURT: All right. I think I am obliged to
24 deny that motion, and I do.

25 Mr. Clerk, would you get the jury.

[Jury present]

THE COURT: Mr. Foreman, ladies and gentlemen of the jury, you remember that I told you that in this case the fact that the Government has the burden of proof affect the order in which arguments are made at the conclusion of the case. The arguments in summation are made for the defendant first and then last by the Government.

Mr. Appleman, will you address the jury?

MR. APPLEMAN: Yes, your Honor.

Your Honor, Mr. Lawyer, ladies and gentlemen of the jury:

As his Honor has just related to you, this will be my first and last opportunity to speak to you on behalf of my client. After I am finished speaking to you right now I will probably never speak to each and every one of you again.

I think I can safely say on behalf of the Court, Mr. Lawyer and myself that you deserve a commendation for sitting there and listening attentively with regard to this lengthy trial pertaining to the esoteric field of taxation. There are certain phrases and jargon used unfamiliar to you with regard to taxation. However, you always appeared attempting to comprehend and understand what was going on. For that I think we all owe you a personal debt of gratitude

and appreciation for your attention.

For conviction the Government must prove beyond any reasonable doubt that Dr. Wolf, the defendant in this action, deliberately, intentionally and knowingly attempted to defeat and evade payment of his income tax; and/or in the alternative that defendant knew when he signed the return that it was false and believed to be false.

This has been stated to you many times but I think it is worth of repetition. This is not a civil proceeding. We are not interested in the amount of tax Dr. Wolf may owe to the United State Government. Now, ladies and gentlemen, we are all taxpayers and we all have our returns either prepared or we prepare the returns ourselves. It is an old American custom that as soon as the New Year comes about, that is, March 1st, we are all saying we have to get that return prepared and then when April 10th rolls around we still say we have to get to that return. What do we do? Most of us go to a preparer, a knowledgeable tax expert or an accountant to have his return properly prepared. What is this man? This man is in a fiduciary capacity. He is your alter ego. He is your trustee. You are relying on him to prepare your return. If you knew how to prepare a return would you pay the sum necessary to have the return prepared for you? If the Doctor, if he knew how to prepare

1 a return have paid \$350. each year to Mr. Edelstein to
2 prepare his return? I doubt it. And as the tax law becomes
3 more and more simplified we find that Congress instead of
4 using one phrase in order to simplify a certain section of
5 the law now used ten phrases or two paragraphs, thus giving
6 you the necessity to use a tax expert.
7

8 What is accomplished after a return is made out
9 for you by the accountant? Are you qualified to look at
10 that return and state: Well, he reported this here. He
11 didn't report that there? Or do you rely on him to use all
12 the information you supply to him and that he should properly
13 place this information on the return? Most taxpayers after
14 a return is finished just want to know one thing -- thank
15 God I'm finished. Do I owe the Government money or do I
16 get a refund?

17 But we all have a duty with regard to that return
18 and if we rely on the preparer, who is our trustee, that
19 is a duty that possibly we have done everything possible
20 to achieve. Now, what reliance do we place on a preparer?
21 In the present situation all records requested by Mr. Benjamin
22 Edelstein, a certified public accountant, giving him all
23 the indicia and aura of knowledge, was given to him. When
24 Mr. Edelstein asked for a record, he received it. Now, are
25 we qualified to tell a CPA, a preparer of a return what is

correct and what is not correct? Shouldn't he know about it?

Now, Mr. Edelstein on the witness stand minimized the \$350. fee. He said "For \$350. I'm not going to do that." Remember that? "I'm not going to do this for \$350."

What did Mr. Edelstein do for the \$350.? He took figures supplied by the defendant and as we know now incorrectly placed it on the return. That is what he did for the \$350. He actually breached his fiduciary capacity to the defendant. The defendant gave him figures and he did not use them.

B2 What figures did he conjure up with regard to the defendant? Let's take this return by return. Let's just use the expense items now. In 1966 the defendant's work sheets had no deduction, the amount claimed for miscellaneous charities and yet there was a claim made for \$500. for miscellaneous charities for deduction on the defendant's return. There was no note on the work sheet and when we asked Mr. Edelstein "How did you place it on the return?" the famous saying came out of Mr. Edelstein's mouth, "Anything that had to be discussed I discussed", and that is all. That is his sole answer.

Did he have any records substantiating or verifying the fact that the Doctor told him he had miscellaneous charities? was there anything in his testimony which

2 revealed why he placed that \$500. deduction on the return?
3 Nothing.

4 You go forward. The decorating expense in 1966.
5 He claimed this was a capital expense. Now, I think I
6 should explain what a capital improvement or expense is to
7 you. When you claim an item is a capital improvement you
8 are entitled to write-off the cost of that improvement over
9 its life. So, in other words, if you do something which
10 has a life of five years every year you can take one fifth
11 of that amount of as a deduction on your return. That is
12 what he did the first year. Now, all of a sudden the second
13 year what does he do? He now claims it as a deduction for
14 decorating, a decorating deduction. He didn't capitalize
15 any more. What was the basis? Why in the first year
16 capitalize and the second year a deduction?

17 "Anything to be discussed, I discussed." That
18 was his answer, his total response to each one of these
19 questions.

20 Now we go to 1968. Again no change with regard
21 to the heading "Decorating", and now Mr. Edelstein feels
22 "Well, I better do something else". He claims it now as
23 an office expense. What? Did he notify the Doctor? No.

24 "Anything that has to be discussed, I discussed."
25 Then we have entertainment. The Doctor in 1966

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showed on his work sheet an entertainment deduction of \$1,100. I am rounding the figure out. All of a sudden what do we find claimed as a deduction on the Doctor's 1966 income tax return? Low and behold, \$1,600. Why? Where? "Anything that has to be discussed, I discussed." Nothing written on the work sheet. No notes as to how he arrived at the deduction, how he increased this amount, but yet he did.

And then what happens in 1967 and 1968? He didn't do it, but in 1969 he figured "Well, gee, I forgot to do this in 1967 and 1968. I better make it out."

In 1969 what happened? The Doctor claims \$1,200. on his work sheet which was submitted to Mr. Edelstein for the preparation of his return. And what happened? Did he discuss it? "Anything that has to be discussed, I discussed." He claimed \$1,700. for that deduction in 1969, ladies and gentlemen. Nothing on the work papers, no notes, but "Anything that has to be discussed, I discuss."

In 1966 the Doctor claimed that he spent approximately \$5,000. for conventions. All of a sudden we have a claim for a deduction of \$5,400. Forty-nine and fifty-four-- He loves the \$500. figures. They are beautiful to him. It is increased another \$500. Why? Nothing on the work sheet. No notes that he made to substantiate or corroborate

1 mcds 9

2 why he increased this deduction from the figures submitted
3 by the Doctor.

4 Now we come to the most beautiful of all items,
5 postage and deliveries. Not one notation on the Doctor's
6 work sheet with regard to postage and deliveries. And what
7 happened? Well, gee whiz, you know, he changed his attitude,
8 not \$500., let's take \$610. this time and that is what he
9 did in 1966.

10 Now, notice the Doctor did not claim this item
11 as a deduction on his work sheet but Mr. Edelstein claims
12 \$610. on the income tax return of Dr. Wolf.

13 Then in 1967 the same thing, nothing on the work
14 sheet. Mr. Edelstein felt inclined to lower this amount
15 with regard to 1967 so he claimed \$440. He is doing the
16 Government a favor. He saved them \$200. or approximately
17 \$170., to be exact.

18 Then in 1969 it was even more. Nothing on the
19 work sheet but Mr. Edelstein claims \$65. as a deduction
20 in that year. Why? Where is the basis, where is the
21 corroboration, where is the justification? There is nothing.
22 Did Mr. Edelstein remember any discussions he had? Of course
23 not. Every answer to the question "Did you discuss this"
24 was "Anything that has to be discussed, I discussed". No
25 specifics, nothing. How can you question the man?

1 mcds 10

2 You can't.

3 Now we go to bridge tolls and parking. Again
4 the Doctor on his 1966 work papers claimed nothing with
5 regard to that deduction. Well, Mr. Edelstein felt that
6 \$500. was not appropriate evidently because he only claimed
7 \$430. for that deduction without again any justification
8 or substantiation to claim that amount.

9 In 1967 he came up with a bright idea, gratuities.
10 Nothing on the work papers, no discussions with the Doctor,
11 but yet he claimed a deduction for \$350. in 1967 for
12 gratuities.

13 In 1968, miscellaneous expenses, don't know where
14 that came from. In 1969 the Doctor on his work sheet
15 claimed a deduction for \$600. for telephone. What do you
16 think was claimed as a deduction? Mr. Edelstein went back
17 to his old practice, \$500. No justification, no substantia-
18 tion, nothing in writing.

B3 19 The Doctor in 1969 on his work sheet had a deduction
20 in the amount of \$600. for cleaning. Well, evidently he
21 felt a little guilty on his part. He only increased it by
22 \$400. this time. A thousand dollars was claimed as a
23 deduction by the Doctor.

24 Now, all of a sudden we have transportation and
25 taxi. Nothing on the Doctor's work sheets but Mr. Edelstein

1 mcds 11

2 claimed \$175. on the income tax return, and then we come
3 to the stenographic services, the independent contractor.
4 There can be no doubt that Mr. Edelstein gave the wrong
5 information pertaining to that. These people were employees
6 and should have been set down as employees, not independent
7 contractors. So that that is Mr. Edelstein with regard to
8 the preparation of his return.

9 Now, Mr. Edelstein made numerous statements to
10 the special agent, to the grand jury and here in the court-
11 room. Let's see a few of these statements. Mr. Edelstein
12 stated that RSK5, which is the grand jury minutes, said
13 "He signed a statement for me when I signed the return, be-
14 fore I signed it. He signed a statement indicating the
15 sheets that he gave me to prepare the return."

16 Did you see those individual sheets that he had
17 each year that he intimated that he had signed? I didn't
18 see those sheets. I saw one sheet prepared in 1970 when
19 this investigation was going on in his handwriting and
20 apparently to protect himself relating the amounts that he
21 reported on the income tax return, not the figures the
22 Doctor gave him but the figures that he placed on the return,
23 and even with regard to that, that sheet that he prepared,
24 wouldn't you think he would take care, make sure that he
25 had all the information properly put on it so that his

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return would coincide with the work sheets? Even there he goofed. He specifically stated that "The figures reflected above do not include the W-2's and 1099's," and we know that 1099's were not reported on the Doctor's returns but yet he admitted receiving these Form 1099's in court before the grand jury and at every stage of this proceeding Mr. Edelstein admitted that he had the Forms 1099 and did not properly use them.

Oh, yes, he stated with regard to the grand jury he denied knowing where the Doctor's checking account was, and this was in 1973 in the grand jury, yet on April 8, 1971 at the request of a special agent he voluntarily submitted the Doctor's checking account from Chemical Bank to the special agents.

Now, how did he arrive at the gross receipts, in other words, the gross income on the Schedule C, total received on Schedule C? In the grand jury Mr. Edelstein stated in 1966 it was submitted orally: "I put it down on paper. I wouldn't prepare any return of any taxpayer unless they signed."

No paper was submitted; no signatures came forth with regard to these figures. But what did he tell the special agent? The special agent's report on page 10 reveals:

"It was further stated by Edelstein that no oral

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information was obtained from the taxpayer in connection with his income since everything related to income was in writing."

In the grand jury he stated "I don't know of any accounts" -- referring to the defendant -- "He never mentioned any accounts to me."

Yet, number one, he submitted the Chemical Bank accounts to the special agent way before he testified before the grand jury, and then he said when asked at the grand jury "Do you know if Dr. Wolf has a Swiss account", he stated "This is the first time I have heard of a Swiss account."

But yet the special agent's report on page 18 reveals that on July 21, 1971 the special agent allegedly told Edelstein about this account.

Now, with regard to the preparation of the return he states in the grand jury, "I sent the return to Dr. Wolf with instructions how to mail it."

It is simple enough. I mean, you should more or less know if you prepare a return how you deliver it to the taxpayer, but yet he states in the special agent's report -- He allegedly told the special agent that "I mailed the returns"; that after Wolf came to the office that Edelstein mailed the returns.

Now, let's go to the year 1966, the first year

1 mcda 14

2 Mr. Edelstein prepared the returns for Dr. Wolf. By the way,
3 this is the first year in issue in this case. What happened?
4 The Doctor received a bill from the Internal Revenue Service.
5 You say Government Exhibit 15, a letter from Dr. Wolf dated
6 prior to this hearing that Mr. Edelstein had evidently told
7 him that the Government made a mistake. Now, why was Dr. Wolf
8 so upset about the Government collecting money due and owing?
9 Very simple. The Government liened on his salary at
10 Mt. Sinai Hospital. Would that upset you? What does this
11 mean? What this means is that the Government, a Government
12 agent, a collection officer, went to Mt. Sinai Hospital with
13 the letter submitted to the hospital and said "Dr. Wolf owes
14 me two hundred forty and some odd dollars and refuses to
15 pay it and I am hereby ordered to collect this money out
16 of the salary of Dr. Wolf." What could be more embarrassing?
17 If you were the Doctor wouldn't you want to know why?
18 And he did. And what did Mr. Edelstein state? Mr. Edelstein
19 related that the Government made a mistake and "You are
20 going to get back your money." Yet the return specifically
21 shows that he had made a computation error on that return
22 and this is the reason why there was additional, but he
23 refused to admit it to the Doctor. He tried to keep it a
24 secret and he did everything else.

25 You heard numerous mention of the work sheets

1 and the income tax returns and attempts made at tying in
2 the figures thereon. Wasn't Mr. Edelstein on notice that
3 Dr. Wolf had substantially more deposits than he showed on
4 the Schedule C when in one year the Schedule was in excess
5 of \$50,000.? Didn't Mr. Edelstein realize that when he
6 received the Forms 1099, that all the income was not reported
7 on the Doctor's return? But no, Mr. Edelstein says "Anything
8 that is to be discussed, I discussed." His own figures are
9 on the returns and now he wishes to shirk his responsibility
10 for that and blame it on the Doctor.
11

B4 12 How many of you or I can look at a return intel-
13 ligently and decipher it after it is prepared especially
14 when it was prepared in the normal course of events between
15 April 10 and April 15? At that point what do you want to
16 do, especially after all the mental anguish accumulated
17 since March 1st when you waited until April? All I want
18 to do is get rid of it. I'll pay the money, get my refund,
19 but I want to sign it and get rid of it. How many of you
20 or any taxpayer after a return is prepared reviews it in
21 depth? Very rarely.

22 With regard to these figures, Dr. Wolf has testified
23 that he gave the accountant the gross income figure which
24 did not include the W-2's and he only had one and the
25 Forms 1099. Now, what is a Form 1099? A Form 1099 --

1 mcds 16

2 And we have repeated this on the trial but I think it is
3 worthy of repetition here -- is a form that is required
4 when anyone makes a payment to an independent contractor
5 who is not a corporation in an amount in excess, I think,
6 of \$600. Banks and corporations are required to file this
7 return for payments in excess of \$10.

8 Now, I think if we all have bank accounts we
9 know that in the normal course of events no matter how much
10 interest you earned that bank is going to send you a form --
11 It is on a machine -- whether you earned \$5. or \$10. It is
12 much simpler to have the machine take out every payment that
13 is made or to try to decipher -- It would cost you more to
14 take out those figures which are less than \$10. So doubtless
15 Forms 1099 were received by the Doctor and admittedly on
16 the stand Mr. Edelstein received them all or received what-
17 ever the Doctor gave him. What happened to these, Doctor?
18 You say to yourself "Gee whiz, you know if Forms 1099 were
19 given, what happened?"

20 I would imagine what happened to the Forms 1099
21 would be a similar occurrence as to what happened to the
22 Doctor's work sheets. The Doctor never received them back.
23 Mr. Edelstein retained all these work sheets. How else
24 can you explain the way the Government obtained these work
25 sheets? These are not Mr. Edelstein's work product. At

mcds 17

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anytime a defendant in any trial could demand work sheets back that he prepared and can refuse to show it to a special agent. Was this done here? No. Did Mr. Edelstein ever give back these work sheets? No. Did Mr. Edelstein ever give Dr. Wolf back anything used with regard to the preparation of this return? No.

So the Doctor now is at a disadvantage. We had no records. We obtained copies of the work papers when the trial was initiated. This was given to us by the Assistant U.S. Attorney's office. That is the first time we saw these work papers since they were used for the preparation of these returns.

MR. LAWYER: I think we are getting way out of line.

THE COURT: Yes, I think we are getting away from it. In fact, in the first place I don't think there is anything in the record about it. But if there is or not, I think it is irrelevant.

MR. APPLEMAN: All right.

Let us go to the Government's witness, Mrs. Milcznski, the Doctor's secretary. On June 15, 1972 she was called in by the special agent. She was sworn in under oath and under oath she stated she had nothing to do with books and records, which was Q and A No.20 and at Q and A No.30 she

1 stated the Doctor had no overwhelming practice, the greater
2 part of his time was spent in research at the hospital
3 practice itself.
4

5 At Q and A 36 she stated that checks, as far as
6 she knew, were deposited. At Q and A 48 she stated she
7 had no instruction regarding the reporting of fee income.
8 At Q and A 53 she stated she billed; she did not bookkeeping.

9 What happened? She came in here to testify and
10 she testified at the grand jury. Now, on April 11, 1973
11 she realizes better what happened in those years than she
12 did in 1972. I find difficulty remembering what happened
13 last week literally, aside from what happened in 1971 and
14 1972. If you asked me what happened last week a year from
15 now I'll be damned if I could remember. Yet she did. All
16 of a sudden she made entries in the books. She had patients'
17 names underscored and these checks were cashed. The Govern-
18 ment witnesses were asked how many checks were cashed and
19 how many checks were deposited. The special agent stated
20 unequivocally that there was not one patient for which all
21 checks which were received by Dr. Wolf were cashed.

22 Now, why did she do this? Let's determine what
23 happened. I wish I was a woman. I could tell you better.
24 But she was dismissed from the position with Dr. Wolf after
25 many years of being employed and now she is a liar and a

perjurer. She admitted she perjured herself before the special agent. She stated specifically "I was dismissed. He terminated my employment." Could that be a reason? Possibly.

Another reason: The Doctor gave her income. Did she report this on her return? No. She didn't report at least \$3,000. a year of income on her return, approximately. She is a tax evader: I got to protect myself. I don't want to be tried.

Now, what purpose would the Doctor have of telling Mrs. Milcznski not to report her income? He claimed it as a deduction. Why would the Doctor want to become involved with a situation of that type?

It is evident that Mrs. Milcznski's testimony is solely for the purpose of protecting herself, a liar, a perjurer and a tax evader.

Let's discuss the testimony of the special agent. It has always been my experience that a special agent should be impartial and objective. He should just relate to you what the evidence is without taking any sides because that special agent represents the Government, represents you and represents Dr. Wolf. Now, what do we have? We have a special agent overzealous and possibly over dedicated.

Do you remember the question pertaining to the

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handwriting I asked him with regard to one of the Government exhibits: Is the handwriting different from the signature? What did he state? He stated "I'm not a handwriting expert. I don't know." But then he he voluntarily said, "However, upon comparing the signature of Dr. Wolf with the returns" -- And at that point he became a handwriting expert. Why? For what purpose? In other words, when it came to the advantage of the Government he became a handwriting expert. If you recall, Mr. Lawyer interceded and stipulated that it is not the taxpayer's handwriting.

MR. LAWYER: Your Honor, counselor is misstating the testimony. I stipulated that it was apparently not the same, but --

MR. APPLEMAN: Apparently not his handwriting.

Now we discuss the expert of the Government, the last witness that the Government had on the stand. The Government witness stated that apparently the figures for which 1099's were received, and we don't know what those figures were, are included in a figure of alleged unreported income computed by the Government. He admitted that. Edelstein on numerous occasions admits that he received these Form 1099's and that they were not included in the figure that he submitted for gross income.

What has occurred here? We have a doctor busy

1 mcds 21

2 in research relying on an accountant, a CPA, who apparently,
3 at least, should have been competent to prepare his return,
4 submitting all information requested to that accountant.
5 Did he state to the accountant: Look, I made four million
6 but I only want to report three thousand? No. Did he ever
7 refuse to give the accountant anything that the accountant
8 requested? There was nothing in the testimony to indicate
9 so.

10 Are we now to state that the Doctor must have
11 examined everything on that return to determine its veracity
12 and truthfulness and propriety? That is a question you
13 ladies and gentlemen are going to have to answer.

14 Now, a great deal has been reflected upon the
15 fact that the Doctor should have realized that not all his
16 income was reported. We all read about tax gimmicks and
17 millionaires who pay minimal tax, etc., etc. I am certain
18 that the Doctor, when he learned of the amount of the tax
19 that he had to pay, considered he had been a genius.

20 Now, with regard to the testimony as to family
21 background, this was not a man of -- he was not born with
22 very limited means. He had a father who was affluent.
23 As a matter of fact, the man left an estate of over \$200,000.
24 This man didn't go to City College, where I went. This
25 man went to Duke University. His father bought him an

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2 office. His sense of values are different than mine and
3 yours. There was always money available. When he was short
4 he went to his sister. His sister testified that she gave
5 him money. When he was short he was able to go to his
6 mother. So, therefore, this man did not have an awareness
7 of how much money he was making, how much money he had.
8 He always had money available to him, be it taxable or non-
9 taxable.

10 Now, ladies and gentlemen, when one considers
11 all the facts involved, an accountant who continually states
12 "Whatever has to be discussed, I discussed" -- Do you have
13 a modus operandi? His work papers reveal nothing. The
14 only thing that the work papers reveal are the fact that
15 these were the figures which were given to him by Dr. Wolf.
16 There was nothing to indicate why he didn't include the
17 Form 1099's.

18 We have a secretary who stated that Dr. Wolf told
19 here, number one, not to report her own income. For what
20 purpose would the Doctor have related that to an employee?
21 He still claimed it as a deduction. There is no purpose
22 involved. We have a secretary who lied and perjured herself
23 and who herself is a tax evader and was dismissed from her
24 job. She stated at the trial that she is still not even
25 under audit by the Government for not reporting her income

during this period of time.

We have the special agent who has apparently become overzealous and over dedicated and lost the impartiality necessary for his job.

All these facts must be viewed with more than a reasonable doubt as to the guilt of the defendant. By the way, if you do not understand the Government's case that in itself is reasonable doubt.

What would have been the result of this case if the 1099's were available? I don't know. But I think we have to consider this because the 1099's, although given to Mr. Edelstein, were not recorded or reported on the income tax return.

Ladies and gentlemen, with regard to the defendant's testimony about the \$40,000. he lost gambling, this in itself would show the amount of money available for the taxpayer's use, for the Doctor's use. It would show the abundance of funds available to him no matter where or why. Furthermore, during this period of time, as was brought out by the Government, the Doctor was involved in litigation pertaining to his marital dispute with his wife. This was brought out by the Government and I think you should consider that.

Ladies and gentlemen, the facts here fail to prove

beyond any reasonable doubt that there was any intent or deceptive practices by the Doctor to defeat and evade his tax and/or in the alternative, that he signed his return knowing that it was false. One must wonder what would happen if Mr. Edelstein were the defendant and the Doctor was the witness. I believe that based on the evidence in this case your only verdict can be not guilty. Thank you.

THE COURT: Mr. Lawyer, would you address the jury?

MR. LAWYER: Yes, your Honor. May I have just a minute?

THE COURT: Yes.

[Pause]

MR. LAWYER: May it please the Court, Mr. Appleman, Mr. Foreman and members of the jury:

After I finish speaking to you Judge Wyatt will give you the instructions on the law that you must apply in this case, but you, the jury, will decide the facts. You will decide what the facts are, who is telling the truth with respect to the eight separate counts in the indictment, each one of which you will return a verdict of guilty or not guilty as to each count considered independently. You will decide whether Robert Lawrence Wolfe, a physician, is guilty of tax evasion -- As I told you, the two phrases are used interchangeably -- as charged in counts 1 thru 4.

2 You will decide whether or not Dr. Wolf is guilty of making
3 false statements in his returns under the penalty of perjury,
4 returns that he signed, that is, to which he subscribed
5 to with respect to counts 5 thru 8.

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6 The trial began November 13, two weeks ago. During
7 the interim you have seen lots of paper, lots of slips,
8 lots of checks. You have seen almost a couple of dozen
9 witnesses. Before we get down to the crux of the proof of
10 guilt which the Government contends such evidence shows in
11 this case, I want to first just review what the defendant
12 was accused of to pull together all of the bits of paper
13 that you saw and all of the witnesses.

14 Now, the first four counts, as I said before, were
15 the evasion counts, tax evasion counts. The prosecution
16 had to prove as to the first element under those first four
17 counts that Dr. Wolf evaded or attempted to evade a sub-
18 stantial -- The word substantial is important -- a substantial
19 amount of his income. We submit that there is really no
20 doubt that the amounts with which he is charged with evading
21 are substantial. His tax liability as reflected on Govern-
22 ment Exhibit 8E for 1966 was \$13,863.94. He paid \$2,221.30
23 for a deficiency of \$11,642.64. This chart is big enough,
24 I believe, for all of you to see.

25 For the four years combined it adds up to a

1 deficiency in income tax of \$64,971.27. Dr. Wolf paid for
2 those four years combined only \$6,547.91. His total tax
3 liability, that is the corrected tax liability when you
4 add the amount that we submit he did not pay plus the amount
5 that he did pay adds up to \$71,519.18. We submit, taking
6 the figures individually that he owed that either of the
7 four amounts that we charge he evaded is indeed substantial
8 by any measurement.
9

10 In order to prove that a person evaded or attempted
11 to evade his taxes it is obvious that you first have to
12 prove that he had income. Then after you prove that he had
13 income you have to move downward and show that a portion
14 of that income was taxable income, say you have gross in-
15 come, then you have deductions, you have exemptions, and you
16 move downward to a smaller amount which is going to be tax-
17 able income. How did we prove that Dr. Wolf had income?
18 How did we show that he had taxable income?

19 The Government relied on the so-called bank
20 deposits method, the bank deposits theory of proof. What
21 is the bank deposits method of proof? I gave you a definition
22 in my opening. Mr. Skolnick gave you a definition on the
23 stand. Judge Wyatt will give you a more comprehensive
24 definition, I'm sure, when he gives you his instructions.

25 At the heart of the bank deposits method is this,

1 and it is quite simple: If a person with a job, with an
2 occupation, with a profession is working daily, he is making
3 money, has bank accounts under his control, meaning in his
4 name, something over which he has dominion or over which
5 he exercises control makes deposits in those accounts, you
6 subtract from the grand total of those deposits for a given
7 year, that is fresh deposits for a given year, not old money
8 that was from an earlier year but all deposits beginning
9 on January 31 thru December 31 of the year concerned, all
10 brand new deposits, you subtract from that total amount
11 any nontaxable items such as \$600., whatever it is, for
12 yourself or for your dependents. You subtract transfers
13 of money, that is money that goes from one account to another.
14 You count the one. You deduct your loans. They are not
15 taxable so you deduct those. Redeposits, you deduct those.
16 Here is the money that was left in the accounts. Then you
17 subtract from that the deductions, the exemptions, the non-
18 taxable income such as the loans, the gifts, the inheritance
19 taxes. The inference is that the remainder of the money
20 is taxable money unless one comes forward showing that it
21 is not taxable income. A person is working everyday and
22 money is coming in. You have traced out all gifts, in-
23 heritances, all redeposits and transfers and so the inference
24 is perfectly logical that the remainder of the money is
25

2 from his occupation for work performed, for service given
3 and therefore it is taxable income, unless that inference
4 is rebutted. That is circumstantial evidence as distinguished
5 from direct evidence.

6 There are two types of evidence, basically, in any
7 litigation, circumstantial and direct. The Judge will
8 explain the difference to you. One is just as good as the
9 other. You are free to believe either one, give one just as
10 much force as the other. It is left to you to decide.

11 I will give you an example. We were all children
12 once upon a time or some of you have children no doubt.
13 Let's say you have at home in the kitchen up on the shelf
14 somewhere a jar of jelly or jam. You are in the other room,
15 the living room, watching television, reading a newspaper
16 or a book. You have your little child in the house. You
17 don't know where he is at or where she is at. All of a
18 sudden while you are reading your book you hear this loud
19 crash from the kitchen. You rush in there. You see the
20 child sprawled out on the floor. You see a jar of jam or
21 jelly spread out all over the floor. The jar is broken.
22 You didn't see what happened. You weren't there. But let's
23 say you see a chair with two telephone books stuck on top
24 of it. The chair is knocked over. The door to the cupboard
25 where the jar of jelly was is also open, and you see a

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2 broken jar on the floor. You infer what happened. The
3 child put the chair in front of the shelves in front of the
4 cupboard, reached for the jar of jelly or jam. He fell
5 over. The chair fell over, the jar broke and there he is
6 sprawled out over the floor. You didn't see it with your
7 own eyes but you know what happened. It is perfectly logical.
8 That is circumstantial evidence, the circumstances. That
9 is all circumstantial evidence is and it is just as good
10 as direct evidence.

11 Now, in this case we don't have jelly and we
12 don't have jam. We have checks, we have money, and instead
13 of a little child we have Dr. Wolf. Instead of the jam
14 being spread all over the floor, he spread the money around
15 six different bank accounts which we think the evidence
16 shows.

B7 17 There was also direct evidence in this case from
18 Benjamin Edelstein, the certified public accountant. There
19 is direct evidence from Rita Milcznski. She was an insider.
20 She saw what was going on, saw records being falsified.
21 She gave direct evidence. She told what she saw, what she
22 heard, that is, what she saw with her own senses, her own
23 eyes and heard with her own ears.

24 Let us return then to the proof first as to the
25 Doctor's income for the years concerned, 1966 thru 1969,

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2 and show how we move downward and prove what amount of the
3 income was taxable. I emphasize we have proved all of his
4 income, all of his income that can be traced. We have
5 proved all of it from the start. Now, there has been a
6 big issue, which we submit is a big non-issue and which we
7 submit isn't relevant to this case, the 1099's because the
8 income of the 1099's was deposited in the Chemical Bank,
9 upon which the tax returns were prepared. The figures show
10 that; the tax shows that. It went into the bank accounts.
11 I will come to that later.

12 Let's go now to how we prove the income. First
13 you have the five banks and the sixth bank, the Union Bank
14 of Switzerland, isn't here. The five banks are the Chemical
15 Corn, also called the Chemical Bank New York Trust Company
16 and due to various mergers now the Chemical Bank. It is
17 all one bank. There were two accounts in that bank, the
18 checking account on the top line with the Chemical Bank
19 savings account on the third line. Barclays Bank of New
20 York is here [indicating]. You remember the South African
21 fellow who testified that this was an English based bank,
22 also with a New York office. The Bankers Trust savings
23 account and the Bank of New York [indicating]. That was
24 a savings account. So you had three savings accounts and
25 two checking accounts and the sixth bank being the Swiss

bank itself.

I stated that we proved total amount of brand new, that is fresh deposits that went into the bank in each of the years concerned. For 1966 you see the totals here. If there is a blank here in the Government's exhibit it means that there was nothing in the bank or the account itself wasn't opened in that particular year. So in Chemical Bank in 1966 there was a total of in excess of \$53,000. In the Chemical Bank savings account in 1966 there was in excess of \$20,000.; the Bankers Trust Company in excess of \$2,000. in a savings account, and so forth on across. That refers to the total amount of new deposits, not old deposits, not money counted again but fresh deposits going in on or after January 1 of the year concerned.

We move down the chart and these in this group of figures are the subtractions and deductions that the bank deposits method contemplates taking out of a total income, so you work your way down to just taxable income, what was deducted salary income from Mt. Sinai and the taxes taken out on that were two forms. Up front the Government gets its money before it gets to you so you don't count that money. It is already taxed. What did the Government do? Generally when you cash your checks you have to live off something. What did the Government do? In making sure

1 that there was no possible duplication of that money the
2 internal Revenue Service gave Dr. Wolf every dollar that he
3 got from Mt.Sinai. It assumed that he lived off nothing
4 of that, that it is possible that he didn't spend any of
5 this money but rather he deposited it. You remember the
6 special agent and Mr. Passaratti testified that they assumed
7 that some of those checks were cashed and money put back
8 into the bank. That doesn't happen a lot but it may happen
9 hypothetically. Every single dollar from Mt.Sinai for every
10 year, for all four years was just handed over to Dr. Wolf
11 not challenged, even assuming that perhaps it made its
12 way into the bank accounts.
13

14 What else was deducted? Transfers between bank
15 accounts. Just read across this line and see what the Govern-
16 ment just knocked entirely, did not count, did not charge
17 as taxable income whatever because the Government contends
18 that it does not really know in certain cases whether the
19 money was put back. If you can't tell, have any doubt,
20 give the defendant all the benefit of doubt and come up
21 with the lowest figure of taxable income.

22 Transfers from bank deposits in 1966, \$15,500.;
23 1967, \$15,383.60; 1968, none. Look at 1969: \$105,820.44,
24 and over on the far right you see all of the Government
25 exhibits that supports these figures, all these exhibits

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you can see. You can ask for any exhibit that was put in evidence. You are the jury. You have the right to see the exhibits. You decide the facts, so you can call for any exhibit that has gone in evidence. Don't forget that when you are deliberating.

Transfers from brokerage accounts. You heard testimony that Dr. Wolf had three separate brokerage accounts, stock accounts, buying and selling, trading in stocks. All of the money involved is deducted because the Government concedes that it doesn't know - maybe that is old money. Maybe that is money accumulated back in 1960 and it made its way into the accounts. There is an awful lot of commission. You will see in this Barclays Bank account in 1969 there is a terrific amount of activity, all of this money going in and going out, weaving its way from bank account to bank account, but the Government just writes it all off. We are not going to count it. The Government doesn't know but that it may be his 1963 or 1964 or 1965 money. We just subtract it so we don't count anything twice. We don't tax a person for money that he may have paid a tax on in some prior year, so we just pulled it out. Refunds and loans - You go to Macy's and buy a dress. You take it back. You get the credit slip and put the money in the bank. You are no better off, no worse off.

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1 You have the same amount of physical dollar from the start.
2 Refunds and loans are also not taxable because you have to
3 pay that back. The income for any service you performed,
4 any work you did you have to pay the money back with
5 interest in most cases. That is pulled out. It is improper
6 to count loans, credits. The bank makes a mistake. Maybe
7 they double charge you on a service charge, something of
8 that nature. Maybe they take out too much for a check that
9 passed thru your account. That is what refunds and loans
10 and bank credit memoranda refer to. They were traced. You
11 hear Special Agent Skolnick say that for two and a half
12 years he was investigating this case on and off with other
13 agents helping him. You heard Agent McGuire. You heard
14 Agent Skolnick testify to the effect that all of these
15 exhibits that have been put together, all of these charts,
16 all of these schedules prepared by him or at his direction
17 over two and a half years making sure that money is not
18 duplicated as best he can, and you still end with a tremendous
19 amount, ladies and gentlemen, on this bottom line of un-
20 reported professional taxable income. After making all of
21 these calculations of unreported professional taxable income -
22 remember we are talking about the money Dr. Wolf earned in
23 his office practice, not his Mt. Sinai Hospital income. That
24 was just lifted entirely out of this picture. We are
25

1 talking about patients in the office or the institutional
2 type of patients such as ITT, insurance companies, etc.
3 We still end up with unexplained deposits that can only
4 come from one source, his practice. You give him all the
5 brokerage accounts. You give him all the Mt.Sinai income,
6 just deduct it. You end up in 1966 with unreported income
7 of \$24,301.42; in 1967, \$22,423.30. Then look at how the
8 figures jump for the last two years: In 1968, \$42,458.53,
9 and in 1969, \$42,671.55. If you had a pencil and you
10 worked out the percentages, it ranges from 43 to 59 percent
11 of the unreported income for the 2 years.
12

13 Dr. Wolf did not report approximately the 60% of his income.

14 So, as to the bank deposits method, there is
15 really nothing complicated about it. That is it, in essence,
16 and we submit that it is not hard to understand. When you
17 saw all the papers, all the slips, deposit slips coming in
18 I told you at the beginning of the trial that it was something
19 like a jigsaw puzzle. It comes in big globs. It is not
20 necessarily tied together in the way you can understand.
21 Looking back on it, all the papers going in were simply to
22 prove, first, total income, the largest amount he made,
23 moving downward to show on all those schedules what was
24 subtracted and what was traced. You saw one of those
25 schedules Mr. Skolnick had. His Honor let me pass the

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twenty-one pages to you. On all those individual items were checks, not little, in round figures 15, 20, \$25, \$30, then there are large amounts, hundreds of dollars, which we submit are logically income, patient's fees. That have the inherent appearance of patient's fees.

All of those deposit slips that were put in evidence each week, day after day, week after week, month after month, year after year, checks, small checks, middle sized checks, large checks constantly going into the account of a man who is a doctor, who is working everyday, who, by the way, spends at least a third of his working day in his office or more by his own admission. It just has to be income. That is the circumstantial part of our case. You only saw a small sampling of patients in this case as witnesses. Only about 15 patients were called, just to give you an idea of the size of the payments Dr. Wolf was receiving, the sizes of the checks also, to show that he was also receiving some cash payments the other witnesses those other thousands upon thousands of checks in those schedules, are listed check by check, which must have been one of the most incredibly tedious tasks to be settled with for over two and a half years. All of those witnesses were not called. We would have been here another two weeks to hear them. You

1 saw a sampling of the patients. We emphasized that.

2 We have "unidentified source" on many of those
3 checks, the evidence shows, but we say you can infer circum-
4 stantially like the jelly and the jam, that those just had
5 to be patients' fees, just had to be checks, and they are
6 logically checks because he is a doctor, he is working day
7 in and day out making fees. It is not a loan, it is not
8 a gift, not an inheritance; \$15., \$10., \$5. They are
9 patients' fees.
10

11 With that I am going to move on to what we consider
12 the heart of the case, that is the proof of fraud. What
13 are, then, the primary issues pertaining to fraud? What
14 does the Government say the evidence shows which points to
15 very obvious guilt? You are going to have to decide for
16 yourself because you are the jury and no one can take the
17 function away from you of deciding what was said on the
18 stand.

19 While Mr. Appleman was summing up to you there
20 were many statements he made as to what was said on the
21 stand with which the Government disagrees. It is your
22 function ultimately to decide who is correct, Mr. Appleman
23 or me or neither of us. You can ask to have something read
24 if you have some doubt. Ultimately you decide. That is
25 your job. You are the jury. You use your own common

1 sense. We may know the law but we are no better at deciding
2 who is telling the truth on the stand than you are..
3

4 The Government submits that the big issue in this
5 case is not whether this money was not reported -- Dr. Wolf
6 testified yesterday and you heard him. He said: Apparently
7 something was wrong with my return; apparently a lot of
8 money was not reported. I never noticed. It never occurred
9 that I was walking around with \$42,000. in the last few
10 years, flitting around from bank account to bank account.
11 Something was wrong with the return but he denies that he
12 knew of it. He denies, in short, that his behavior was
13 willful. He denies that when the returns were subscribed
14 and the penalty for perjury statement was in there, he
15 denies that he knew there was all this unreported income.

16 Dr. Wolf conceded quite a few things on the stand.
17 He conceded that he cashed checks and put the money in a
18 safe deposit box after he cashed his check, took the money
19 out of the safe deposit box and put it in his Barclays
20 account. As to this Mr. Edelstein knew nothing. Mr. Edel-
21 stein started preparing the returns in 1965. Dr. Wolf
22 conceded he cashed the checks and put the money in his
23 Barclays account and then shipped it out to Zurich. He
24 concedes that he didn't tell Mr. Edelstein about his various
25 bank accounts. Mr. Appleman said he knew all about the

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1 bank accounts. We concede no such thing. When this investi-
2 gation was under way in 1970 and 1971 he knew about the
3 Chemical Bank but he had never acknowledged that he heard
4 about it in the sense that he saw the deposit tickets or
5 that he saw the checks or anything of that nature. He said
6 he never saw the passbooks on the savings account. There
7 are minor descriptions about the interest in the Bank of
8 New York, Bankers Trust; about interest that has nothing
9 to do with deposits that went into or with the passbook
10 and he didn't see the account in that sense, so we submit
11 that the issue here is not whether there was something
12 wrong with the returns, that is clear, and we submit that
13 is conceded even by Dr. Wolf. There is a lot wrong with
14 the returns, but he says he didn't know, that anything he
15 did was not willful. It is Mr. Edelstein's fault.
16 Mr. Edelstein was either negligent, incompetent or, worse,
17 he was guilty himself of some criminal wrongdoing.

18 Let's talk about Mr. Edelstein. He is an elderly
19 man, somewhat cantankerous, as you might have seen. What
20 does the evidence show he was called for? He was on the
21 stand about two days, but what is really the one essential,
22 the crucial portion of his testimony? Just one thing. He
23 prepared the tax returns for the four years involved based
24 upon information submitted to him by Robert Lawrence Wolf.
25

1 He prepared four tax returns based upon information which
2 Robert Lawrence Wolf concedes he turned over to Mr. Edelstein
3 and which Dr. Wolf himself prepared. Mr. Edelstein wrote
4 in ahead, "Give me A, B, C," and Dr. Wolf put the informa-
5 tion in an envelope or along with his secretary caused
6 information to be put in an envelope and to be submitted
7 to Mr. Edelstein. He didn't give him the checks or the
8 deposit slips. He said "I only gave him what he asked for.
9 He is a CPA. I'm no tax expert. Whatever he asked me for
10 I gave to him." The little boy doesn't know any better.

12 That is what Mr. Edelstein was called for, to
13 prepare the returns, but the important thing is that he
14 prepared the returns on the basis of information given to
15 him by the defendant.

16 Now, ladies and gentlemen, I think it doesn't
17 really need to be emphasized that if you get someone to do
18 something and you give him wrong information or insufficient
19 information and you know you are doing that and something
20 is done whereby the result is wrong, then you are the guilty
21 party if the other person innocently relies on what you did.
22 If you take a gun, for example, and give it to a little
23 child who doesn't understand and tell him to go shoot some-
24 body, do you have any doubt that you are the guilty party
25 if the child actually goes out and shoots somebody?

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2 He really does not know that pulling the trigger on a gun
3 with a bullet in the gun will kill somebody. He does not
4 know the consequences, can't appreciate the consequences.
5 Is there any doubt in your mind that you can't evade
6 responsibility and therefore evade criminal wrongdoing if
7 you mislead someone, if you have a party that is acting
8 innocently, to do something? The Judge will charge you
9 on delegation of responsibility. If Dr. Wolf knew that he
10 was giving Mr. Edelstein insufficient information,
11 Mr. Edelstein has done nothing wrong. Just as Mr. Edelstein
12 said: No, why would the special agent warn me of my
13 constitutional rights? What have I done? What do constitu-
14 tional rights have to do with me? That is what Skolnick said
15 on the stand on cross-examination by Mr. Appleman - they
16 weren't investigating Mr. Edelstein. Mr. Appleman made a
17 big deal about the proposition that Mr. Edelstein was
18 lifting the amount of the deductions. Ladies and gentlemen,
19 we gave him all of his deductions. You have heard ad nauseum
20 from the stand that none of the deductions in the tax returns
21 were ever challenged. No one wants to hassle over it.
22 Maybe the deductions are correct; maybe they are not correct.
23 The point is for purposes of this trial the Government did
24 not even consider them and he still ends up with these
25 large amounts of money.

1 And look at it another way: How many ways does
2 the defendant want to have it? The deductions didn't help
3 Mr. Edelstein. If the amounts of the deductions on the
4 returns were raised with or without Dr. Wolf's knowledge,
5 who gets the money? These aren't Mr. Edelstein's bank
6 accounts. He didn't have a Swiss account; he didn't have
7 these five bank accounts in New York. They were the Doctor's,
8 so any error, any omission or even wrongdoing, we don't
9 vouch for Mr. Edelstein. He was called for just that one
10 purpose and no one vouches for any witness up there on the
11 stand. Any money that was derived from any mistakes or
12 any negligence or worse, any criminal wrongdoing by Mr. Edel-
13 stein benefited the defendant and ultimately what does it
14 matter, because none of it was counted.

15 Mr. Appleman summed up to you for something like
16 twenty minutes going thru tax returns, picking up ten dollar
17 raises, hundred dollar raises, five hundred dollar raises --
18 it doesn't matter. This was not counted. It was all accepted
19 for purposes of this trial.

20 Now, you have heard that Mr. Edelstein either
21 didn't exercise due diligence, he was incompetent or worse,
22 he was holding back the returns for Dr. Wolf. Dr. Wolf
23 went back to him year after year after year. Dr. Wolf said
24 on the fifteenth he would go pickup the return and you
25

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1 saw him identify the returns -- all those returns or three
2 of them, I'm sorry, on April 10th. Mr. Edelstein just
3 rushes them thru: "Give me my \$250., \$350. and get out."
4 He doesn't explain anything to him and every year he goes
5 back.
6

B10 7 Let's compare Dr. Wolf's background, of which
8 Dr. Wolf himself made sommuch on the stand. For ten minutes
9 he related his achievements and Mr. Appleman made much of
10 it. We say that argument recoils upon Dr. Wolf when you
11 compare him with Mr. Edelstein. As I said, you saw
12 Mr. Edelstein, an old man, a CPA for a long time. We sub-
13 mit that he seemed quite short on the stand. He didn't
14 remember some minutia. He is a CPA during taxes year after
15 year, presumably working on many other tax returns and why
16 should he remember why he had lifted a deduction \$5., \$10.,
17 \$500. He had done hundreds, maybe thousands of tax returns
18 since 1966 or 1969 so why should he remember the individual
19 reason, especially when you consider that Dr. Wolf gave
20 him the information, and we submit the evidence shows no
21 reason for Mr. Edelstein raising deductions even if it were
22 relevant, on his own.

23 Let's compare Dr. Wolf with Mr. Benjamin Edelstein.
24 Dr. Wolf a graduate of college and graduate of medical
25 school. According to the evidence he has published many

1 articles. He has traveled all over the world. Six bank
2 accounts. His father was a dentist. In short, he is a
3 well educated, well traveled, well known and, as the saying
4 goes, well connected in the field, thru his travels, thru
5 his articles, thru this family. That is true. Here is a
6 man who is not poor, who probably has seen money. We don't
7 know how much. Here is an estate of over \$200,000. This
8 is not a Howard Hughes or a Nelson Rockefeller, but one who
9 would know how much money he has. You have a quarter of a
10 million dollar estate. It is not so easy to forget.
11 Dr. Wolf has three separate brokerage accounts. The exhibits
12 were put in were put in the 80 series, brokerage accounts
13 with White Weld, Goodbody and a third name which escapes me
14 at this moment. You see the activity that was going on
15 with respect to these accounts. In 1969 over \$100,000. in
16 two separate instances moving in, moving out, weaving around
17 in those bank account. My point is that Dr. Wolf knows
18 about money, financial things. He knows about these
19 complexities. He is well traveled. He writes a lot, knows
20 a lot of people. He has been around. Mr. Edelstein appeared
21 to be perhaps in his 70's. Dr. Wolf is now 45 years old.
22 When all of this was going on he was in his late 30's, early
23 40's. Lucid.

24 Does it make sense then that Benjamin Edelstein

1 could put one over on the Doctor, that somehow Dr. Wolf would
2 not realize that he did not have all of this money leftover?
3 This is not money which has any tax on it. This is \$24,000.
4 individual, separate American dollars. This is forty-two
5 thousand individual, separate American dollars. I mean some
6 of us whistle - Switzerland. It is still American money.
7 This is American money free and clear. When you add it up
8 for four years it is over \$130,000. That is just clear
9 money in your pocket. Do you know notice it? Would you
10 notice if you had \$42,000. extra in a given year or in
11 several years just free and clear and it is just building up?
12

13 Dr. Wolf said on the stand and he made the incred-
14 ible remark, "Oh, I never realized I had this extra money.
15 It just never occurred to me whatever." He is only paying
16 in one year a little over \$600. in taxes, \$666. in taxes.
17 But it never occurs to him that perhaps something is wrong
18 with his tax return, and Mr. Edelstein is being quite mean
19 to him saying "Give me \$350.; give me my money or you can't
20 see the tax return." Dr. Wolf walks out but asks no question.
21 He doesn't ask him anything. Ladies and gentlemen, it is
22 simply not believable.

23 When you compare Dr. Wolf's background with
24 Mr. Edelstein's, it is more unbelievable. You don't put
25 anything over on a man of Dr. Wolf's status and his back-

1 ground and his education and his connections. Ask yourself,
2 what could Mr. Edelstein's motive be. I have already
3 covered that in part. He is getting \$250. to \$350. a year
4 for doing tax returns. He also said he did the City and
5 State returns. Mr. Appleman put in a couple of letters
6 that showed during the year a couple of matters came up
7 about City real estate taxes which has absolutely nothing
8 to do with this case. So that during those years for
9 \$350. at the outside he is cheating on Dr. Wolf's return.
10 Maybe he is cheating on his own. That is not an issue.
11 Mr. Edelstein is not on trial. Why is he going to cheat
12 on Dr. Wolf's income tax for \$520., \$300. or \$350 or \$400?
13 Nothing to do with him, nothing to do with him whatever.

14
15 Mr. Edelstein also defended Dr. Wolf. You know
16 Agent Skolnick testified he went back again and again to
17 Mr. Edelstein because he wasn't getting the information he
18 was asking for. Mr. Edelstein said Dr. Wolf has nothing to
19 worry about. What are you bothering him for? He gave him
20 all the papers eventually but he thought there was nothing
21 wrong with him. We submit that is what the evidence shows.

22 Remember the telephone call? Agent Skolnick is
23 in Mr. Edelstein's office asking him about the foreign bank
24 accounts. Mr. Edelstein denies that Dr. Wolf has foreign
25 bank accounts. He says "I have asked him time and time

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again." He got tired of answering the same question on the stand several times: "Why do you keep asking? He has no foreign bank account." And Mr. Appleman has made much of him denying he knew about certain accounts. Ladies and gentlemen, we are talking about a two and a half year investigation. Mr. Skolnick was asking about foreign bank accounts. Sometimes he was asking just about the Chemical Bank checking account. It is really of no great moment what Mr. Edelstein really knew about these bank accounts, but what is important is that Dr. Wolf denied that he even had the Swiss bank account. If there is nothing wrong with it why deny it? If there is nothing wrong with it why couldn't Mrs. Milcznski type in the number? Why does Dr. Wolf tell her to leave a blank for the number and not to type it in: "I'll type it in myself." Why? Was she going to fly to Switzerland and get the money herself?

B11 Mr. Edelstein has no motive, none whatsoever, to falsify these tax returns. If he did -- Let's say something wrong was going on between Dr. Wolf and Mr. Edelstein; that Mr. Edelstein gets Dr. Wolf in his office and he says, "Okay, let's jack up this figure a little bit. Let's give you another \$500. on deduction on this." The money is still going to Dr. Wolf and if there is anything wrong with that it means that Mr. Edelstein is guilty -- Mr. Edelstein and

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2 Dr. Wolf are in a conspiracy, accomplices aiding and abetting
3 one another and falsifying the returns. That doesn't help
4 Dr. Wolf at all. It just means you have two guilty people,
5 Mr. Edelstein and Dr. Wolf, but there is no proof that
6 Mr. Edelstein did this. Mr. Appleman has said you haven't
7 seen any letter that Mr. Edelstein claims Dr. Wolf signed
8 after each year. No, you didn't, but you saw Government
9 Exhibit 15. Maybe Mr. Edelstein was mistaken. Maybe he
10 didn't have him sign after each year. Maybe that is true.
11 But Government Exhibit 15, which is what was read, the
12 letter I read to Dr. Wolf ad nauseam, that covers three
13 years that are relevant to the case, 1966, 1967 and 1968.
14 Dr. Wolf wrote this letter February 23, 1970. You ask for
15 that letter and read it yourselves. The contradictions are
16 clearly blatantly brazen compared to what Dr. Wolf testified
17 to at this trial. Dr. Wolf acknowledged it was his signature
18 and in that letter to Mr. Edelstein he talks about "My
19 checking account." He acknowledges it is the Chemical, al-
20 though it is not mentioned specifically. He acknowledged
21 it on the stand, "My checking account." Dr. Wolf wrote that
22 letter. That is not one in Mr. Edelstein's handwriting.
23 That is not one where he said "Sign this and get out. Don't
24 look at it." You know, "Sign your life away. Don't look
25 at it." That one is typed with Dr. Wolf's signature with

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2 the typewritten name and then the letters RLW below it and
3 this is in February, 1970 after the investigation is under
4 way and after you can assume Dr. Wolf knew what was going
5 on. He still writes that letter: I don't owe any more
6 taxes. All of my money was deposited in the Chemical
7 checking account. Mr. Edelstein said he didn't do anything
8 wrong. Dr. Wolf has already exonerated him. Is that in-
9 competence on the part of Mr. Edelstein?

10 The point is that you are left without any evidence
11 whatsoever so suggest that Ben Edelstein consciously did
12 anything other than follow Dr. Wolf's instructions as to
13 how much money he made. Let me read, by the way, just a
14 line from Government Exhibit 15, which is dated February
15 23, 1970, after the investigation is under way. By the
16 way, you hear Dr. Wolf testify no one told him he had been
17 investigated. He knew he was audited. What do you think
18 an audit is but an investigation? Something is going on.
19 They are looking at your return for some reason. What is
20 the distinction between an investigation and an audit?

21 Another thing Dr. Wolf said was that there was
22 no telephone call. Special Agent Morris Skolnick said he
23 was in Mr. Edelstein's in the Empire State Building and
24 heard with his own ears Mr. Edelstein get on the phone and
25 ask for Dr. Wolf; that he didn't get Dr. Wolf and said

1 "Have Dr. Wolf call me." A few minutes later a telephone
2 call comes in and he again hears Mr. Edelstein say "Dr. Wolf?"
3 And again the foreign bank account is denied. Then we have
4 Mr. Appleman trying to imply that we didn't know who he
5 was talking to
6 maybe he called the Weather Bureau and was just listening
7 to the Weather Bureau report.
8

9 We know he was talking to Dr. Wolf. There was
10 no reason, especially at that time, no indictment, just an
11 audit --

12 MR. APPLEMAN: That is not an audit. That is an
13 investigation when a special agent is in on a case and --

14 THE COURT: I know, but Mr. Lawyer is now making
15 an argument that it doesn't make any difference whether it
16 is called an audit or an investigation. The Internal
17 Revenue Service is looking into it. Now, that is an argument
18 that can be made to the jury and I believe I will leave it
19 to the jury what weight to give it, if any.

20 Go ahead, Mr. Lawyer.

21 MR. LAWYER: I don't care what you call it. Call
22 it whatever you want, audit, investigation. The point is
23 Dr. Wolf in Government Exhibit 15 says:

24 "There is no discrepancy between the amount which
25 I received and the amount of money deposited."

He also said:

"Just a note to remind you that the total amount of money deposited in my checking account for the years 1965, 1966, 1967, 1968 reflects not only the total amount of money which I received from the practice of medicine but also deposits into this checking account of the checks which I received from the practice of medicine but also deposits into this checking account of the checks which I received for my salary from the Mt. Sinai Hospital and, checks which I received from the sale of securities "

It is all going into my bank account, my Chemical account. He acknowledged on the stand that he was talking about the Chemical account.

Well, yes, Mr. Lawyer, I did cash some checks. That happened.

Of course it happened. The witness from the Chemical Bank showed you the stamps on those checks. This has to be cashed. The Doctor's signature is on those checks. Rita Milcznski's signature is on those checks. It all fits together. Rita Milcznski says she cashed checks. The bank official says: Yes, it definitely was cashed across the counter. Then Dr. Wolf acknowledges, yes, there were accounts. Doesn't it all fit just like separate pieces of a puzzle - it all comes together? They reinforce one another.

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You see the whole picture. Rita Milcznski wasn't lying about that. Rita Milcznski, we submit, wasn't lying about anything. She told the truth about those checks.

There were other exhibits in the defendant's handwriting which he adopted by signing which we submit simply embarrass him in the case. The evidence is simply devastating in his own writing, even if you didn't depend on the money alone, and there is Rita Milcznski's testimony.

Government Exhibit 12 is a letter from Dr. Wolf on his own letterhead. You can ask for all of these exhibits. This one is dated March 18, 1968. On the back of it in Mr. Edelstein's handwriting, no doubt about it, it says "The following information is to be used in preparation of my 1967 tax return."

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Okay, Mr. Edelstein wrote it, but where did he get the information from? There is no dispute that he got it from Dr. Wolf himself. In fact, Dr. Wolf signs it twice. Mr. Edelstein is incompetent and negligent? If you are only giving your accountant handwritten information or information where he is not seeing the original slips, where he is not seeing the original checks and is making him sign for it, he is covering himself. He is looking out for Ben Edelstein, so he writes it out. There is no dispute as to that being information from the Doctor. He signs

it twice. He signs it "Robert Wolf," and Mr. Edelstein doesn't like that. He signs it "Robert L. Wolf." He puts the little carrot in there. Mr. Edelstein is covering himself so that if anything is done wrong he is out from under: I am doing what was told me. That is what happened.

Then we go to Government Exhibit 14A, a prescription slip: "Wolf's office bank deposits exceed income because bank deposits reflect sale of stocks and other money not related to business."

Who is running the show and how much money is he telling him about? This is his prescription slip and his handwriting on this prescription slip which he submits to Ben Edelstein. He tells him why there is more money in the account. That is in terms of fresh deposits for 1967. I'm sorry, not 1967 but for 1969. He tells him why there is more money in the bank account: "Because there is money in there for my stocks." He is giving the information to Ben Edelstein. Ben Edelstein isn't getting this himself. He isn't seeing the passbooks. He does not even know about some of the banks. Remember Dr. Wolf is giving him information and wrong information: I gave him what he asked for.

"Did you volunteer anything, Dr. Wolf?

"No, he is the CPA. He should know what he wants.

I don't understand these things."

If you had \$42,000. -- You may not prepare your own tax returns but you probably know what to do for your own tax returns. He did not volunteer information. You can't shut your eyes, ladies and gentlemen, to wrongdoing. You can't close your eyes in that you are not giving a person sufficient information for purposes of filling out your tax return and say it is his fault. Dr. Wolf has an obligation to disclose the information that was in fact going into the return.

Next consider the secrecy which the evidence reflected as regards Dr. Wolf's behavior. I have already mentioned the Swiss bank account. If there is nothing wrong why does he deny to Ben Edelstein on the phone - Ben Edelstein denies it to the special agent several times and he defends Dr. Wolf by saying there is nothing wrong and that the man has no foreign bank account. Subsequently when Agent Skolnick testified you heard Judge Wyatt ask "Why would you ask someone whether they have a foreign bank account? Isn't that a weird question?"

He asked because he had some information. Dr. Wolf didn't know that and Mr. Edelstein didn't know it. Why does he deny the bank account if there is nothing wrong? Is Ben Edelstein going to tell his wife so that she will get

1 all the money? Is the special agent going to tell his
2 wife? Why is he trying to hide all this money? Why doesn't
3 he let his secretary type in the number of the account?
4 Is she going to fly to Switzerland? She isn't going to
5 forge his signature and get the money. Why? You would
6 think that a person would give all the information, that a
7 person would say "Look, here's all the information," but
8 if you deny it you are keeping things secret and there
9 is something wrong.
10

11 There were also exhibits which you can ask for
12 showing Dr. Wolf is sending money to Switzerland thru the
13 Barclays account. Now, Mr. Appleman asked the question
14 of a witness, I think of Mr. Skolnick: Well, it is possible
15 that some guy came over here on a plane, put the money in
16 a suitcase and flew back with it. There are all sorts of
17 ways you can send money out. He wouldn't put it in letter
18 form so you could discover the letter. No, I wouldn't
19 think you would even if you think the letter is not going
20 to be discovered. You deny that. You don't tell about the
21 Swiss bank because you don't think it is going to be dis-
22 covered. Some of those letters there are fresh typed
23 copies by Dr. Wolf and he Xeroxes the letter and puts on
24 a signature each time. The original letters are mailed not
25 from his office, not from Ben Edelstein, but from his

house up in Snug Harbor, Candlewood Lake in Connecticut.

This is a man taking care of his own finances, taking care of his own business. At the same time he said, "Ben Edelman took care of all of those for me. I relied on him. Whatever he asked I gave him."

We can turn that around, turn it on Dr. Wolf:

"Whatever he asked, I gave him. If he didn't ask I didn't give him. If he didn't ask about the other five bank accounts that he knew nothing about, I didn't give it to him."

Consider also, ladies and gentlemen, the inherent improbability of some of the things that Dr. Wolf said and first just look at the money itself. I don't want to belabor that point. Just look at the size, the amount of money. It is just highly improbable that you can overlook that you have that much extra individual dollars, over \$130,000 building up for four years. It is just totally improbable. If you don't pick up the error in 1966, aren't you going to pick it up in 1967? There is a saying that if you fool me once it is your fault. If you fool me twice it is my fault. The doctor is trying to fool us for four years. If he didn't pick it up in 1966, he should have done so in 1967. Maybe he didn't see it in 1967. Should not he have seen the error by 1968? He doesn't see it in 1968. He misses it three times in a row. Don't you think he would have picked it up after the \$42,000

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1
2 in extra money? Isn't he going to pick it up in 1969? He
3 tells you nothing. It is not to be believed. Four years. He
4 is not Howard Hughes or Nelson Rockefeller who really don't
5 know how much money they have. These are amounts which are
6 substantial by any standards but which is not so little that
7 you aren't going to discover that you have it.

8 Let me point out something else. We were talking
9 about deductions. The doctor is telling you he is such an
10 ingenue, he is so innocent and doesn't know what is going on
11 in his tax return for 1969. These returns are in evidence.
12 He deducts \$210 for financial publications, magazines about
13 money, about stocks. Then there is another one. In his tax
14 return for 1967 he deducts other money for financial journals,
15 journals again, the same \$210. This is a man who is con-
16 stantly reading, who is constantly keeping up to date on what
17 is going on in the world of finance and business, but it never
18 occurs to him: if Mr. Edelstein has no knowledge about these
19 other bank accounts, I don't tell him.
20
21
22
23
24
25

1 He never tells Mr. Edelstein that he is cashing those checks.
2 He gave you some excuse which maybe you understand but which
3 I submit was not understandable, that he deposited all the
4 money in his checking account, yet somehow he is cashing
5 checks thru some manipulation he says accounted for in the
6 work sheets, admitting that he prepared the work sheets and
7 "I put in what I wanted to put in." I never understood.
8 Perhaps you did. It is totally improbable, just not subject
9 to belief. Dr. Wolf blamed Mr. Edelstein for everything and
10 the fault is his. You have heard of no fault automobile in-
11 surance. This is no fault tax evasion: I had all this
12 money. It wasn't my fault-Mr. Edelstein.

14 Dr. Wolf has invoked a lot of people in this. He
15 invoked the name of his sister and the name of his mother.
16 His mother he invoked the most. He isn't trying to hide
17 the money from his wife. He is trying to save it for his
18 son. He isn't hiding it from either nor from the Government.
19 He invoked the name of his father and that of Ben Edelstein,
20 about which you have heard a lot.

21 Now, none of it was ever his fault. He is innocent.
22 He just didn't know what was going on. We submit all of
23 the talk about blaming Mr. Edelstein, ladies and gentlemen,
24 is simply one big smoke screen, simply trying to camouflaged
25 the issue as to whether Dr. Wolf willfully and knowingly
evaded the taxes and we submit that the evidence is over-
whelming that he did: that he did not give the correct

information to Mr. Edelstein and that you cannot prepare a correct return in that way and he did not, he cannot escape responsibility for it.

Let's look at another piece of direct evidence, Rita Milcznski. The defense has paid very little attention to her. You notice when she was on the stand she admits that she was fired. You heard no such testimony from Rita Milcznski. She was not asked. Interestingly, Dr. Wolf said she was fired. Dr. Wolf didn't even come out and say she was fired. Well, sort of, in a way. The implication was obvious. He is trying to say that Rita Milcznski came in here to falsify testimony to get him because she was fired. Her husband was sick for a while and then she needed money. She worked for a while. You would think that because she is upset about her husband being sick at this time that she wouldn't work very well. She couldn't concentrate at that point when her husband got well. At that point. She didn't work well. She didn't need a lot of money. You saw Rita Milcznski on the stand. The value of the jury system is that you use your common sense in appraising the credibility of witnesses. Who are you going to believe? I submit that you saw her as a pained woman, a woman pained to be up on this witness stand. She states that she felt very loyal to Dr. Wolf. She stated that

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2 when she was first called down before the Internal Revenue
3 Service and she found Dr. Wolf was being investigated --
4 She thought it had something to do with her social security
5 card -- she wished the floor would open up. What did she
6 do? She told things that were outright lies, things that
7 were not true to Mr. Skolnick. Why? To protect Dr. Wolf.
8 She felt loyal to the man who helped her husband. She worked
9 for him since 1961. There was income for her but then
10 after this initial onset of being upset because of Dr. Wolf
11 the Government doesn't go away and she gets a grand jury
12 subpoena later and comes down and talks the grand jury.
13 Now she realizes that this is really going too far. This
14 is all very serious. She can't go into the jury room and
15 commit perjury, so she has to tell the truth. She looks
16 out for Rita Milcznski. She says, "I tried to protect
17 Dr. Wolf." The problem didn't go away. Morris Skolnick
18 has been on the case for two and a half years. He is
19 pursuing this case. She goes to the grand jury. You remember
20 what she testified to on the stand, those daily cash receipt
21 books which Mr. Appleman and Dr. Wolf on the stand so con-
22 spicuously glossed over, skated over, skated around. He
23 gives her daily receipt books with looseleaf pages that can
24 be removed, several names on a page. As the payments come
25 in you record the payment in the patient's name. He draws

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lines thru certain ones and says, "Here, rewrite these sheets and leave out the names, drop the names and the amounts of money that the people pay that I have drawn this line thru."

Where does she get this story from, ladies and gentlemen? He made it up so the tax is reduced because when he is being audited at that time he doesn't want to show so much money.

"You use a different ink so it doesn't look like it was written all at the one time."

Do you remember her testimony? Her testimony is all here. You can ask to have anything reread if you want.

In her testimony she also talked about the permanent patient cards. After she has changed a certain number of these sheets they don't bother with the sheets any more. Dr. Wolf gives her certain cards with the patients' names underlined so it never gets into the daily receipt book and the money is never recorded so you don't have to change the names or rewrite the sheet with a different pen.

Ladies and gentlemen, you heard the testimony. She didn't make that testimony up. You saw her on the stand. She hated to be up there. She hated to be testifying against her former boss who now claims he fired her for incompetence only after nine years, 1961 to 1969. He finally decides

2 to let her go. Rita Milcznski's testimony slightly buries
3 Dr. Wolf, if there was any doubt, which we submit there
4 wasn't. With Ritz Milcznski's testimony the proof is
5 absolutely overwhelming against Dr. Wolf. She also identi-
6 fied various checks that she sent to the bank and cashed.
7 She suspected at some point what was going on. She acknow-
8 ledged that she knew Dr. Wolf had a Swiss bank account.
9 She acknowledged that she changed her receipt books; that
10 she participated in a wrongdoing.

11 She was asked, "Well, who threatened you? Did
12 Mr. Skolnick threaten you, did the prosecutors threaten
13 you?

14 "No."

15 Did she pay taxes on certain income? That was a
16 question that backfired. First of all, she testified that
17 Mr. Skolnick didn't know about it and the prosecutor didn't,
18 that is, neither Mr. Tighe, who proceeded me, nor me, no
19 one knew about it. How does Mr. Appleman know to ask her
B14 20 whether she reported certain income? How did he know to
21 ask her: Did you pay taxes? What did she say? The question
22 backfired.

23 "Dr. Wolf told me not to pay taxes on that money."

24 He is asking her to be a liar, perjurer, tax evader.
25 How much money was there anyway? We are talking

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2 about \$3,000. How much tax is there going to be on \$3,000.? 980
3 What are we talking about here? We are talking about
4 \$24,000., \$22,000., \$42,000. and \$42,000., a total of
5 \$130,000. This is a tax on a lousy \$3,000. which no one
6 knew about.

7 Mr. Appleman has told you the Internal Revenue
8 Service is not auditing her to this day. We don't know.
9 There was no evidence one way or the other. Let's assume
10 that the Internal Revenue Service is not auditing her to
11 this day. Who told her to evade her taxes? He not only
12 told her to evade his own taxes but he tells his secretary:
13 You evade yours too. It is only \$3,000.

14 Lawyers have a saying in a trial that if you
15 don't have the law on your side, argue the facts. If you
16 don't have the facts on your side, then argue the law.
17 We submit that the defense doesn't have either on its side
18 so they argue smoke screens, 1099's. The 1099's, ladies
19 and gentlemen, we submit is the biggest non-issue that ever
20 came down the pike in this case. It is virtually totally
21 irrelevant to the issues in this case. You heard ad nauseam
22 what a 1099 is. It is just a piece of paper as distinguished
23 from W-2 Forms which independent contractors get.

24 Why do we state 1099's are irrelevant. We sub-
25 mit they are just a smoke screen to mislead you, to

1 camouflage, to fudge the points so that the jury would go
2 off on a tangent and not look at Rita Milcznski, not look
3 at all these bank accounts, the Swiss account. You have
4 talk about 1099's. You have nothing else going for you.
5 The 1099's, ladies and gentlemen, would only count for a
6 very few dollars in any given year. As Mr. Passaretti said
7 when he was on the stand, and he was the last Government
8 witness, as to what the taxes would be as to the 1099's,
9 there is just no way that they would come close to those
10 figures.
11

12 You heard Mr. Appleman read off the various companies
13 that should have given 1099's. They probably did. It is in
14 the interest of the companies to give the 1099's. Dr. Wolf
15 said he got them and he put them in the left-hand side of
16 his drawer; that he got them from ITT, United Medical,
17 the insurance companies, but those were only a few companies
18 and it just doesn't add up. It is irrelevant. We proved,
19 first of all, by the very nature, by definition of the
20 bank deposits method, we proved all of his income anyway
21 and as you look at the exhibits almost all of the 1099
22 income, in fact, was reported. So the point is really
23 irrelevant. Virtually all of the United Medical Service
24 money, which was a huge chunk of money for Medicare and
25 Blue Shield, was reported. Why was that reported, you might
ask? That is like a semi-Governmental type of agency.

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2 Medicare money is coming from an area where Dr. Wolf might
3 well imagine if I don't report that I will be caught.

4 Why was Mr. Edelstein asked about that when he
5 was on the stand? Why was Mr. Skolnick asked? Ben Edelstein
6 by saying this doesn't include 1099's simply means that it
7 is all merged. He is only talking about whatever 1099's
8 Dr. Wolf gave him. He put it all in one blob on the work
9 sheets that Dr. Wolf gave him. Even if you don't believe
10 that it is irrelevant, you are only talking about a few
11 thousand dollars. Look at the checks. They all went thru
12 the Chemical account. He didn't report all the money in
13 the Chemical account. He put a lot of money in the Chemical
14 account. He based his taxes on that account. It wouldn't
15 pull these figures down at all. What is the clincher on
16 the 1099 argument as to why it is irrelevant? Dr. Wolf
17 acknowledged he cashed some of those checks. You saw the
18 ITT checks and as you go thru some of those United Medical
19 Service checks you will find even that some of the Medicaid
20 checks were cashed. That is the clincher. If you put it
21 together with Government Exhibit 15: All of my money is
22 deposited in my checking account, which could be if you
23 were cashing all of those checks which came from institutions
24 which came from 1099's. Dr. Wolf's argument is sort of
25 hard to follow. If he is saying it would be crazy to

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2 evade taxes on money for which 1099's were issued, well, 083
3 he did report most of it which the Government could checkup
4 on. Most of it went into the accounts. He didn't report
5 all of it. That is the end of the argument. He did cash
6 some of the checks. Some of those 1099 checks were cashed,
7 put in the safe deposit box, taken out of the safe deposit
8 box and put in the Barclays account and then sent to
9 Switzerland. He goes thru five steps, five very elaborate
10 steps. So, the 1099 argument is a big fizzle. It is
11 absolutely meaningless. It doesn't change the figures at
12 all, even if they were not counted by the Doctor and even
13 if they were not included in the work sheets. Remember,
14 these work sheets are just big blobs of information, nothing
15 identified to the particular source. The argument then
16 peters out. You can't get away with a smoke screen to mis-
17 lead, to fudge the issue that there is something here with
18 the 1099's when we are only talking about a few dollars,
19 relatively speaking, anyway.

20 Another defense contention is centered around the
21 proposition that a lot of the money in the bank accounts
22 was money from his mother and from his sister. You heard
23 his mother and his sister testify. Mrs. Rae Wolf, Dr. Wolf's
24 mother testified that she gave her son approximately
25 \$18,000. between 1958 and 1968. That is a ten-year spread

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when you count the years inclusively. It was over ten years. She has no records. It was all cash. There is no way of checking up on him one way or the other. It is a little difficult to say whether she did or did not give it to him, I might add..

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The sister testified that from the four-year period in issue here, 1966 thru 1969, she gave her brother \$8,000., approximately, all in cash, no records, no checks, never been paid back.

Somehow, even though there are no records, even though there is a spread in one case of over ten years and in his sister's case of over four years, it is nice round figures of \$18,000. and \$8,000. Dr. Wolf also estimates -- That is the word they were using -- They all estimated it was \$8,000. and \$18,000. Look at the mother's \$18,000. Dr. Wolf brought the figure down by 20% to \$15,000., he estimates.

Look at the money in cash spread out over ten years. Even if you assume it is true, how can it change the figures? She had no recollection of how much she gave him in any given year and had no recollection of what she gave him on a single occasion. Even if you allot that \$18,000. on the basis of \$2,000. a year -- I mean it will be less than \$2,000. a year spread out over ten years.

2 He doesn't know how much of that went into 1966 thru 1969.
3 Even if you take the sister's \$8,000. and spread that out
4 all over the four years, that is only averaging out \$2,000.
5 We only have to prove a substantial amount of money, ladies
6 and gentlemen, and the figures are rounded off. You recall
7 when I opened I said the figures are rounded off always
8 downward, put the last three numbers in zeros, always in
9 favor of the defendant. All we have to prove is a sub-
10 stantial amount of income and even if his mother and sister
11 did give him that money which they estimate they gave him,
12 it wouldn't change the figures very much. He would still
13 have a substantial amount of income that was evaded. But
14 did they give him that money? We don't really know. Maybe
15 they did. I'm sure no one doubts that they probably gave
16 him some money. I'm sure we have all borrowed from
17 relatives at one time or another when we have needed some
18 money. But how much sense does it make that if you did
19 borrow money because you were short, as we were saying
20 during the trial, if you needed money did you go borrow
21 some cash on the spot to put in a bank? By definition if
22 you need the money it is because you are short. You need
23 the money to go buy something, you go spend it right away.
24 You are not going to put it in the bank in 1969 -- I don't
25 know if his mother gave him money in 1969. Even if you

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need the money, you don't go put it in a bank when you have figures as reflected on Government Exhibit 7.

You don't go borrow it. How much money do you need if you are gambling away \$40,000. or \$50,000., if you can believe that. We submit that you have no evidence that is even true. Dr. Wolf said, and it is rather interesting, that there is no time he is in this litigation with his wife when he is not trying to hide from her out to save from her and

He says "I gambled away \$40,000. I borrowed also from my sister and my mother. I got a little short and I borrowed it from my relatives, one \$8,000. in four years and \$18,000. over a ten year period."

Dr. Wolf even invoked the name of his father in borrowing money. You heard his testimony on the stand. You saw how evasive he was. We submit he was very evasive on that. His father is ill. He passes away in December of 1966. The will is probated several months after that. He lends his mother money. That could apply to 1966 if Dr. Wolf is talking about 1966 and -- I'm sorry, 1966 and 1967 when the will was probated. This is the year that his mother's money was tied up. He is lending her money. You saw the affidavit, 91. He says "I have been supporting my mother, \$125. a week."

Ladies and gentlemen, in 1966 and 1967 look at

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2 the amount of money Dr. Wolf claims he had taxable. 987
3 year he only paid \$791.92. I'm sorry. That is what he
4 claims as his tax. Look at the amounts of money that he
5 claims in fact was taxable income. If you are giving your
6 mother \$125. a week, that is \$6,000. a year. He says
7 that he was helping out because his father was ill for a
8 large part of 1966. Then the mother's estate inheritance
9 was tied up until the will was probated in the middle of
10 the next year in six months or twelve months. The point
11 is that if it is \$125. and if it is twelve months, it is
12 \$6,000. It is almost as much as he claims he was even
13 making. Is he telling the truth in an affidavit? Was he
14 telling the truth on the stand? Was he telling the truth
15 in either place? We submit that it just doesn't work out.
16 It just doesn't add up one way or the other. He is borrowing
17 from his father who is ill. At the same time he is giving
18 money to his mother, his mother is giving money to him and
19 he is getting money from his sister. It just doesn't make
20 sense, it doesn't tie in at all.

21 Considering also the improbability in this area
22 of the fact that Dr. Wolf is now 45, so he was in his late
23 30's early 40's during these years involved, he had been a
24 doctor in excess of ten years, between ten and fifteen years
25 by that time. You heard Rita Milcznski testify that it

1 was during the years 1966 thru 1969 -- She left in May of
2 1969 -- She testified that the Doctor's practice was build-
3 ing up. In the first years he was doing research papers,
4 he was doing a lot of research down at the hospital, but
5 he began spending more time in his practice and his research
6 almost completely stopped beginning around 1969 because he
7 was really getting a lot of patients then. Consider the
8 fact that unlike a ballplayer or any other athlete where
9 your skills are decreasing as you grow older, that is, you
10 are drawing money when you are younger, when you can run,
11 jump, play tennis well, your younger years, but when you
12 are a doctor, lawyer, accountant most of your income you
13 may well imagine depends on your experience. Dr. Wolf
14 during that period of more than ten years when you might
15 well and quite logically expect that his income would be
16 on the rise, just as Rita Milcznski said and just as in
17 fact the chart itself shows -- Look at the amount of money
18 he is making. It has gone up. That is just when Dr. Wolf
19 is losing money, 1968 to 1969. He may as well close up shop.
20 He would save some \$6,000. because he claims he is losing
21 money that year. Look at the income. The income is going
22 up this last year to \$34,000. an awful lot of money --
23 He reduced that figure, but that is how much he has when
24 he was borrowing from his sister and mother. My point is
25

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1 there was a rise in income of the Doctor so how much money
2 could he be needing from his mother and sister? How much
3 money could he be borrowing because his income was going
4 up?
5

6 In the Government's case there was some testimony
7 about the fact that if you make money in one year, you make
8 money in 1969 it is taxable in 1969. It is not taxable in
9 1970. You may hold on to the checks, but it is taxable in
10 the year in which you earn the money and in Government
11 Exhibit 48B, the Barclays checks, if you look at those
12 checks, the date on which those checks were made out were
13 dates, like, in October, in November. They were not
14 deposited until January of 1970. How much money would
15 Dr. Wolf have needed to borrow, he had these checks he was
16 holding on to? He had checks for three or four months that
17 he is holding on to in another year. He had cash on hand,
18 so he didn't need money. He just could have cashed those
19 checks, but he did not. He just held on to them for three
20 or four months and he is borrowing money, if you believe
21 him, from his mother and sister.

22 Another line of defense, another smoke screen, is
23 Dr. Wolf's marital problems. He was very emotionally upset,
24 he says. That may well be so. None of us know. We don't
25 know anything about the internal mechanics of his marital

1 problems. In one case it is none of our business. Insofar
2 as he injected it into this case he stated he was trying
3 to keep the money. Mr. Appleman asked him whether he was
4 trying to hide it from his wife and he said, "No, I was
5 trying to hold on to it for my son" 3500 miles away in
6 Zurich. It only takes a few days to get home. What happens
7 when you get upset? There is nothing odd or strange that
8 anybody ought to be ashamed about in this regard? What do
9 you do when you get upset with a girlfriend, a boyfriend,
10 a wife, somebody? You may sulk, you may be heartbroken.
11 You may not be able to concentrate on your work for a while.
12 Take a few days or a week and get away. You don't go around
13 opening up six bank accounts. You don't go around putting
14 money in Switzerland just because you are upset. That
15 doesn't stop you from giving your accountant the correct
16 information. You still operate, life still goes on, even
17 when it slows down a bit. Why does it take the course of
18 opening a secret bank account 3500 miles away if you are
19 trying to hide the money so your wife won't get alimony
20 and you are hiding it from your Government too? There is
21 no excuse for evading your taxes to hold on to it for your
22 son. God knows why he needs as much money as is reflected
23 in these figures for his son's education.
24

25 THE COURT: Mr. Lawyer, are you going to be very

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2 much longer? If so, I would rather give the jury a few
3 minutes now.

4 MR. LAWYER: May we? I would like a recess myself.

5 THE COURT: Mr. Foreman and ladies and gentlemen,
6 we will take a short recess.

7 [The jury left the courtroom]

8 THE COURT: About how much longer?

9 MR. LAWYER: Maybe twenty minutes.

10 THE COURT: You have been going about an hour and
11 twenty minutes now.

12 MR. LAWYER: I have?

13 THE COURT: Yes.

14 MR. LAWYER: I'm sorry, I really --

15 THE COURT: It is an hour and twenty minutes
16 exactly. I didn't limit either one of you but --

17 MR. LAWYER: May I have another twenty minutes.
18 I didn't even reach count 5.

19 THE COURT: I haven't pressed either side. I think
20 you ought seriously to consider, though, the law of dimin-
21 ishing returns.

22 MR. LAWYER: Yes.

23 THE COURT: Mr. Lawyer, when you have completed
24 your argument I am going to ask you to take the charts down
25 and put them face to the wall.

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2 MR. LAWYER: Yes, sir.

3 [Recess]

4 [Jury present]

5 THE COURT: All right, Mr. Lawyer.

6 MR. LAWYER: I will direct my attention now to
7 the last four counts of the indictment, counts 5 thru 8.
8 Those are what we have referred to in shorthand fashion as
9 the false declarations counts, the false statements counts.
10 All of you who have filled out tax returns every April 15,
11 there is a statement which was read at the beginning from
12 a paper. It is over the place of your signature and says,
13 in essence, that "I hereby declare that the information
14 in this return is true, accurate and correct to the best
15 of my information, knowledge and belief. That is the
16 declaration that the Government contends Dr. Wolf knowingly
17 and willfully falsely signed his name to, that is, falsely
18 subscribed to.

19 The evidence in proof of those counts, in essence,
20 is the same evidence that proved the tax evasion count.

21 Now, understand you don't have to find the tax
22 evasion in order to find the Doctor guilty in counts 5 thru
23 8. All you have to do is find that there is a false
24 material statement or declaration in either of the four
25 tax returns with which you are concerned. That is not to

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1 say that you reject the information about evasion. We sub-
2 mit that all spills over. We are simply trying to establish
3 that one count doesn't necessarily depend upon the other
4 and the specific individual falsifications with which
5 Dr. Wolf is charged refers to the gross income he failed to
6 report, that is, the money he left out, the \$42,000. in
7 1969, the \$42,000. in 1968 and so forth. That is not the
8 tax but the gross amount of money. And the proof, as we
9 said, incidentally happens to be the same as under the tax
10 evasion counts. You look at the testimony of Rita Milcznski.
11 you look at the bank accounts. You look at the secrecy
12 concerning the Swiss account, and so forth, and we submit
13 thattthose counts drag right in. There is no doubt whatever
14 that Dr. Wolf knowingly and willfully falsified those tax
15 returns.
16

17 The figures, as I said before, range from 43% to
18 59% of money that Dr. Wolf did not report, that he had free
19 and clear on which he paid not one red cent, did not pay
20 zilch, not a dime on approximately \$130,000.

B17 21 I am going to sit down in just a few moments.
22 Before I do I do want to thank each and every one of you
23 for your attention as Mr. Appleman did. I think you have
24 been very attentive on a trial which over a two-week period
25 and now in the third. I have tried to raise all the

arguments I could have raised, some argument or other which came out in the testimony and which you may remember. It may be that one or two of you may remember it, so that you can bring it to the attention of your fellow jurors. You are not wholly dependent on what Mr. Appleman said or what I said or what the Judge says. You heard all the evidence. You are the jury and you are going to decide. You may make the arguments which you think I should have made.

This has really been a case about the greed of Dr. Wolf, not what he needed but where he was evading taxes not because he needed the money but just because he was greedy, we submit.

Anatole France once said:

"The law in its majestic equality forbids the rich as well as the poor from sleeping under bridges, from begging in the streets and from stealing bread."

Fortunately we don't get uptight in this country about sleeping under bridges -- Perhaps it is unfortunate -- or stealing bread, but the spirit of that quotation I think is very relevant to this case. You have heard about Dr. Wolf's background, his education, about his writings, about his well connectedness, about his traveling, about his relatively very, very fortunate, well-off background. Well, you are under oath, just as Judge Wyatt, just as I am,

1 just as Mr. Appleman, you are all under oath to be even-
2 handed in your treatment in this case. We submit the well-
3 off as well as the man on the street, the laborer who is
4 only making the minimum wage is bound to pay his taxes and
5 you are bound to act on the evidence and find Dr. Wolf
6 guilty without regard to his status, his achievements, his
7 background, just as well as you would if Dr. Wolf were only
8 making a \$1.25 an hour and if he was, colloquially speaking,
9 a have-not or a nobody.
10

11 We submit that the evidence is crystal clear,
12 that it is overwhelming, that there is really no doubt about
13 it. We submit that the evidence has shown that Dr. Wolf is
14 guilty on count 1, count 2, count 3, count 4, count 5,
15 count 6, count 7 and count 8 and we ask you to return a
16 verdict of guilty on each and every count. Thank you.
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[cont'd]

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CHARGE OF THE COURT

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THE COURT: Mr. Foreman, ladies and gentlemen of
the jury:

This case is now about to be submitted to you for
your decision as jurors on the issues of fact here involved
and, of course, your decision on those issues determines
whether your verdict as to this defendant is guilty or not
guilty.

In making your decisions you act as ministers of
justice and you discharge your responsibility of citizenship
which it is not too much to call sacred. In making your
decisions you are to adopt an attitude of complete fairness
and complete impartiality. You are to appraise the evidence
calmly and objectively and without any bias or prejudice
for or against the Government or for or against this
defendant.

You are the sole and exclusive judges of the facts.
You determine the weight of the evidence and the credibility
of all witnesses. You decide all conflicts and differences
in the evidence. You draw whatever reasonable inferences
are justified from the facts as you may find those facts
to be.

My function at this point is to give you instruc-
tions as to the applicable law. Your duty is to accept
and follow my instructions and apply them to the facts as

you may find those facts to be.

In determining what the facts are you must rely on your own recollection of the testimony and the exhibits and other evidence, including any stipulations of counsel. What I may say as to any facts during these instructions and what counsel have said to you in their closing arguments this morning or at any other time during the trial is not evidence, is not binding on you and is not to be taken in place of your own recollection, which is what controls.

The fact that rulings have been made by the Court, by me, during the trial is not to be taken as any indication of any views by the Court as to what your decision should be as to the guilt or innocence of this defendant. You are not to assume that I have any opinion as to the guilt or innocence of the defendant or the truth or falsity of any of the charges. The fact that the Court has denied motions or granted motions in the course of the trial is not to be taken by you as an indication that the defendant is believed to be guilty or not guilty. The rulings on motions and objections to evidence are matters of law with which you, the jurors, trying the facts, have no concern.

At the same time, rulings made during the trial on objections to the admissibility of evidence, whether objections by the Government or objections for the defendant,

are not to be considered by you in any respect, and in this connection I should say, members of the jury, that counsel not only have a right but have a duty to raise whatever objections there may be to the admissibility of evidence. But statements made by counsel in argument on objections to evidence are not, of course, themselves evidence.

Similarly, I would remind the jury that what is said between Court and counsel the jury should disregard, and in this connection you must remember that Judges are only human. Sometimes they are impatient. I may have been impatient from time to time and, if so, it is a fault on my part and you are asked to forgive and to disregard it.

Counsel for both sides have been able and dedicated and their zeal in behalf of their respective clients is commendable. I would also remind the jury that when from time to time I asked questions of one witness or another it was only with the object of making some testimony clearer and certainly is not to be taken as an indication of any view by me as to the guilt or innocence of the defendant or the credibility of any witness.

The fact that the Government is a party and that the prosecution is brought in the name of the United States does not entitle the Government or the witnesses for the Government to any greater consideration than that accorded

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2 to the defendant and the witnesses for the defendant. At
3 the same time, the Government and its witnesses are entitled
4 to no less considerations. All parties, Government and
5 individuals alike, stand equal here before the bar of justice.

6 The indictment, as I believe I reminded the jury
7 and emphasized earlier, is merely an accusation. It is a
8 charge. It is not evidence and no proof of the guilt of
9 the defendant. You should not give any weight whatever to
10 the fact that an indictment has been returned against the
B18 11 defendant. He has pleaded not guilty.

12 The Government, members of the jury, has the
13 burden of proving the charges against the defendant beyond
14 a reasonable doubt. It is a burden that never shifts and
15 it remains upon the Government throughout the entire trial.
16 A defendant does not have to prove his innocence. On the
17 contrary, he is presumed to be innocent of the accusations
18 contained in the indictment and that presumption disappears
19 only if you are satisfied that the Government has
20 sustained its burden of proving the guilt of the defendant
21 beyond a reasonable doubt.

22 Now, in weighing the evidence to determine whether
23 there has been proof beyond a reasonable doubt, you should
24 consider the quality and the substance of the evidence and
25 not the quantity or number of witnesses.

Now, members of the jury, I just used the expression, and you have heard it in argument this morning, a reasonable doubt. What is it? It is a doubt founded on reason and arising out of the evidence in the case or the lack of evidence. It is a doubt which a reasonable person has after carefully weighing all the evidence. It is a doubt which is substantial and not merely shadowy. A reasonable doubt is one which appeals to your judgment, your reason, your experience, your common sense. It is not an excuse to avoid the performance of an unpleasant duty. It is not sympathy for a defendant. A reasonable doubt is not a vague, speculative, imaginary doubt but such a doubt as would cause prudent people to hesitate before acting in matters of importance to themselves.

Proof beyond a reasonable doubt does not mean proof to a positive certainty or beyond all possible doubt. If that were the rule few men or women however guilty, would ever be convicted. It is practically impossible for a person to be absolutely and completely convinced of any controverted fact which is not capable of being proved to a mathematical certainty. In consequence, the law in criminal cases is that it is sufficient that the guilt of a defendant be proved beyond a reasonable doubt and not beyond all possible doubt.

Now we turn to the indictment. The defendant, Dr. Wolf, is charged in the first four counts with violation of a Federal law which makes it a criminal offense for a person willfully to attempt to evade or defeat a tax due to the Government, in this case income taxes. These first four counts may be called the attempted tax evasion counts. The defendant is charged in the last four counts with violation of the Federal law which makes it a criminal offense for a person willfully to make and subscribe a tax return which contains or is verified by a written declaration that it is made under the penalties of perjury and which he does not believe to be true and correct as to every material fact.

These counts may be called the false return counts. I should say a preliminary word about what this case is not about. It has nothing to do with the collection of any taxes that may or may not be due to the Government. This is a criminal case. It is only to secure the enforcement of criminal sanctions setup by Congress. There is a distinction between civil liability imposed upon the defendant and a criminal responsibility for his acts and conduct. Therefore, we are not concerned with civil liability, whether or not taxes claimed to be due have been paid or will be paid by the defendant. This will not be determined

by you in deciding the fact issues of this case.

The first four counts in the indictment are based upon Section 7201 of the Internal Revenue Code which, in pertinent part, provides:

"Any person who willfully attempts in any manner to evade or defeat any tax imposed by this Title or the payment therefor is guilty of a crime."

An attempt to evade Federal income taxes for one year is a separate offense from an attempt to evade the tax for any other year and we are only concerned here with Federal income taxes, not State or City taxes.

Under our law income taxes are imposed and administered on a calendar or fiscal year basis; and each year is treated as a separate unit. For this reason the indictment charges separate offenses for each separate year involved and this particular case, as you have heard, involves the calendar years 1966, 1967, 1968 and 1969.

In substance, the first four counts of the indictment charge that the defendant by filing false and fraudulent income tax returns willfully attempted to evade or defeat a substantial part of the personal income taxes due for the four years it involved.

I will read the first four counts of the indictment, the statement of the offense being the same for each year

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2 and therefore each count, the differences in the counts
3 being the years and the amounts involved:

4 "The grand jury charges on or about each of the
5 dates hereinafter set for the in the Southern District of
6 New York Robert L. Wolf, the defendant, unlawfully, will-
7 fully and knowingly did attempt to evade and defeat a large
8 part of the income tax due and owing by himself to the
9 United States of America for the calendar years 1966, 1967,
10 1968 and 1969 by preparing and causing to be prepared,
11 signing and causing to be signed, mailing and causing to
12 be mailed, and filing and causing to be filed with the
13 District Director of the Internal Revenue Service for
14 Manhattan, New York, New York, a false and fraudulent income
15 tax return on behalf of himself wherein it was stated that
16 his taxable income for each respective calendar year was
17 the amount hereinafter set forth and that the amount of
18 income tax due and owing thereon was the amount hereinafter
19 set forth, whereas as said defendant then and there well
20 knew his taxable income for each respective calendar year
21 was approximately the amount hereinafter set forth upon
22 which there was due and owing to the United States of
23 American income tax of the approximate amount hereinafter
24 set forth."

25 I should say that it is not necessary for you

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to remember the form of the charge or the details of the separate counts because at the end of my instructions I am going to give a copy of the indictment to the foreman for the use of the jury.

Now, after that which I have read there follows the separate statement as to each count. In the first count the indictment sets forth that in the year 1966 the reported taxable income of the defendant was \$10,819.63 and the tax stated on the return was \$2,221.30 whereas it is charged the defendant's actual taxable income for that year was \$35,000. on which the actual tax owed was \$13,000.

B19 In the second count the indictment sets forth that in the year 1967 the reported taxable income of the defendant was \$4,659.58 and the tax stated on the return was \$791.92, whereas it is charged the defendant's actual taxable income for that year was \$27,000. on which the actual tax owed was \$9,000.

In the third count the indictment sets forth that in the year 1968 the reported taxable income of the defendant was \$12,412.09 and the tax stated on the return was \$2,867.83, whereas it is charged that the actual taxable income of the defendant for that year was \$54,000. on which the actual tax owed was \$26,000.

In the fourth count the indictment sets forth

that in the year 1969 the reported taxable income of the defendant was \$3,699.25 and the tax stated on the return was \$666.86, whereas it is charged the defendant's actual taxable income for that year was \$46,000. on which the actual tax owed was \$21,000.

The charges center, as you know, about the Government's contention that Dr. Wolf willfully failed to report substantial amounts of professional income from his medical practice thereby understating his income.

Those are the charges in the first four counts of the indictment and I repeat, the indictment itself is not evidence.

Now, to sustain the charges in the first four counts the Government must establish beyond a reasonable doubt each of the following essential elements:

[1] That the defendant received substantial taxable income in addition to that reported in the return for the year in question upon which unreported income a substantial additional Federal income tax was due and owing.

[2] That the defendant made an attempt to evade or defeat the tax and

[3] That he did so willfully.

With respect to the first element, the receipt of substantial unreported taxable income, this may be proved

1
2 by any practical method available in the circumstances of
3 the given case. Accordingly, before we consider in detail
4 the first and other elements of the offense, I should say
5 a word about the nature of evidence.

6 The law recognizes two types of evidence, direct
7 and circumstantial. Direct evidence is where a person
8 testifies to what he himself or she herself saw or heard,
9 that which he or she has knowledge of by virtue of the
10 senses. Circumstantial evidence is where proof is given
11 of facts and circumstances from which in terms of common
12 experience one may reasonably infer the ultimate fact sought
13 to be established. Circumstantial evidence, if believed,
14 is of no less value than direct evidence for in either case
15 the essential elements of the crime charged must be
16 established beyond a reasonable doubt, and I take an example
17 now which I usually use in describing circumstantial evidence
18 to illustrate what is meant by the expression circumstantial
19 evidence.

20 You recall in the old story of Robinson Crusoe
21 how one day he saw footprints in the sand on the beach.
22 He did not see a man walking on the beach but he immediately
23 drew an inference from the fact of the footprints that a
24 man had in fact been walking on the beach. That is about
25 all there is to circumstantial evidence. You infer on the

basis of reason and experience from an established fact the existence of some further fact.

The Government in this case relies in part upon circumstantial evidence to sustain its burden of proof. To establish the first element, that the defendant taxpayer had substantial additional taxable income which he failed to report on the respective tax returns, the Government relies upon what is often referred to and has been referred to here as the bank deposits method. The underlying concept is that if a taxpayer is engaged in an income producing business or profession and is regularly depositing money in bank accounts under his control, then to the extent that such deposits are not attributable to redeposits, transfers, loans, gifts, inheritances or other nontaxable income, such deposits constitute evidence of taxable gross receipts under properly determined conditions and taxable income is determined from taxable gross receipts.

Accordingly, under this theory if the aggregate of the deposits is substantially in excess of reported income and all nontaxable items, as I have just described, an inference is permitted, absent a satisfactory explanation that the unaccounted for difference or balance is unreported taxable income for the year in question.

If you find that such deposits plus non-deductible

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cash expenditures after making the prescribed eliminations and deductions exceed gross receipts reported in the defendant's tax return for such year or years, you will proceed to inquire whether the Government has established that those excess deposits and non-deductible cash expenditures represented taxable income on which the defendant willfully attempted to evade and defeat tax.

In this connection the Government must establish that the defendant was engaged in an income-producing business or profession and that he realized income from such activity during the period in question in excess of that reported. It is not sufficient that the evidence simply establish excess deposits during the period involved but it must be shown that such excess deposits were made from funds realized as income in the period thru the income producing business or profession.

Explanations or leads may be offered to the Government by or on behalf of the taxpayer as to the source of his funds used for deposits or cash expenditures during the years in question. Such leads might, for example, be the receipt of gifts or loans or inheritances. If these are reasonably susceptible of being checked the Government must investigate into the truth of the explanations.

On the other hand, when relevant leads are not

1
2 forthcoming, the Government is not required to negate every
3 conceivable source of taxable income, and at the same time
4 if relevant leads are forthcoming the Government is not
5 required similarly to negate every conceivable source of
6 nontaxable funds.

7 The Government claims that it has correctly taken
8 into account in this case all of the factors which I have
9 mentioned and that the resulting sum of the defendant's
10 bank deposits as adjusted and his cash non-deductible
11 expenditures for each year represents a reasonable approxi-
12 mation of the defendant's gross income; that after subtract-
13 ing the defendant's allowable business expenses and personal
14 deductions and exemptions from the gross receipts as com-
15 puted by the bank deposits method, the result is a figure
16 which fairly approximates the defendant's true taxable in-
17 come.

18 The defendant denies these claims of the Government.
19 You noted that in this first essential element the addition of
20 tax due and owing must be substantial. Now, there can be
21 no exact guideline to what is meant by substantial and if
22 you are convinced beyond a reasonable doubt that there was
23 a deficiency in tax you must decide whether the amount is
24 substantial. It should be noted neither the exact amount
25 of the additional unreported income nor the exact amount

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2 of the additional tax charged to be due thereon need be
3 proved by the Government precisely. It is not a requirement
4 that the Government prove all the figures precisely as they
5 are charged in the indictment. It is sufficient if any
6 substantial portion of the tax was attempted to be defeated
7 and evaded as charged in a given count.

8 Now, the second essential element is that there
9 must be an attempt to evade or defeat the tax. The attempt
10 may consist of the failure to report the full income as
11 required by law. The attempt alleged in this indictment
12 is the filing of false and fraudulent returns by failing
13 to include in each instance the full taxable income of the
14 taxpayer, the defendant, Dr. Wolf. An attempt is made
15 when a false return is knowingly filed.

16 To sustain the charge that the defendant filed a
17 false and fraudulent tax return you must be satisfied that
18 he knew that in the years in question he had income that
19 was taxable and which he knew it was his duty to report
20 in the returns and that he attempted to evade or defeat
21 payment of the tax due thereon, or a substantial part there-
22 of, by knowingly and intentionally failing to state in
23 the returns all of his taxable income for the year in
24 question.

25 There remains the third element, that the

defendant's failure to report additional income in the years in question, if you do so find, was willful.

Now, if you should find that the defendant understated his income in the returns but that he did not do so willfully, with specific intent to evade taxes, you should acquit him. The Government must establish beyond a reasonable doubt that the defendant acted with a specific intent of defeating the true taxes known by him to be due and owing. Willfully means that one acts knowingly, purposely and with the specific intent to disregard the law, do that which the law forbids. It involves conscious wrongdoing or, as has sometimes been stated, an evil state of mind - a criminal intent and purpose to violate the law - in the context of this case to cheat the Government out of a substantial part of taxes known by the defendant to be due it.

Actual knowledge that returns signed were false and subsequent filing in spite of such knowledge would show that crimes were committed willfully.

On the other hand, willfully does not mean inadvertence, carelessness or honest misunderstanding of what the law requires. There is no willfulness in mere errors of law, mistakes of fact, bad judgment or even mere careless and unorthodox methods of accounting.

The Government contends that it has established

beyond a reasonable doubt the essential elements as I have defined them, including that the defendant acted willfully. The defendant denies that the Government has met its burden of proof and contends that defendant has been shown to have acted willfully because, so defendant contends, there is no evidence of any intentional act or omission by which he intended to evade taxes.

Willfulness, members of the jury, is an issue of fact. It is an issue you are called upon to decide. Medical science has not yet devised any instrument which can record what was in one's mind in the past or what then motivated him or her. The state of a person's mind may be inferred from his words, his actions, his conduct. Thus, direct proof of willfulness is not required. It would be a rare case when it could be shown that a taxpayer was doing certain things with the specific object of defeating or evading the payment of his income tax. Accordingly, circumstantial evidence is usually relied upon. Consideration of all the facts and circumstances established by the evidence may permit a reasonable inference of willfulness. Willful intent may be inferred from conduct such as obtaining currency for a number of checks for medical fees rather than depositing the checks in a bank account, altering books or records, avoiding making the records usual in transactions of this kind or by any conduct, the likely

1
2 affect of which would be to mislead or conceal the true
3 facts as to one's income.

4 It is for you and for you alone to say whether
5 the evidence shows such conduct and, if so, what inference,
6 if any, shall be drawn from it.

7 Now, Mr. Foreman, ladies and gentlemen of the jury,
8 a taxpayer may of course delegate the responsibility for
9 the preparation of his returns to a person who he has reason
10 to believe is competent to handle such matters such as a
11 certified public accountant. The mistakes of such a person
12 are not attributable to the taxpayer. However, the taxpayer
13 is required to give or make available accurate information
14 to the accountant with respect to his income. He cannot
15 shift responsibility. He cannot blame it on the person
16 he retains if he deliberately withholds from that person
17 vital information.

18 Evidence has been introduced showing that the
19 defendant, Dr. Wolf, did not prepare his tax returns; that
20 they were prepared for him by Mr. Benjamin Edelstein who
21 is qualified to prepare Federal income tax returns for
22 others. If the defendant provided Benjamin Edelstein with
23 full information as to his income during the year and the
24 defendant then adopted, signed and filed the return for
25 himself as prepared by Edelstein without having reason to

1 believe that it was not correct, then you should find the
2 defendant not guilty.

3
4 If, on the other hand, you find beyond a reason-
5 able doubt that the defendant willfully and knowingly did
6 not provide full and complete information to Edelstein or
7 that he knew the return as prepared by Edelstein was not
8 correct and substantially understated the tax liability,
9 then you should not acquit the defendant simply because he
10 did not prepare the return himself but rather had it pre-
11 pared for him by another.

12 There have been received in evidence several
13 schedules prepared by agents of the Internal Revenue Service.
14 Among these are Exhibit 5, data taken from the tax returns
15 filed by Dr. Wolf; Exhibit 7, a summary of claimed unreported
16 professional income of Dr. Wolf; and Exhibit 8, a summary
17 of claimed taxable income and tax liability of Dr. Wolf.

B21 18 You have also seen enlargements or blowups of
19 some or all of these schedules. These schedules and blowups
20 are not evidence by themselves. They are mere visual
21 representations of information or data claimed to be set
22 forth in the testimony of witnesses or in documents that
23 have been received in evidence. They are no better than
24 the testimony or the documents upon which they are based.
25 It is for you to decide whether the schedules and blowups

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2 correctly present the data set forth in the testimony and
3 in the exhibits on which they are based.

4 Now, the general rule as to witnesses is that
5 they are permitted to testify only as to facts and may not
6 express their opinions. The exception to this rule is in
7 the case of experts, if qualified as an expert on some
8 particular technical matter. In this case the Government
9 called Mr. Passaretti as an expert witness to testify to
10 the tax computations. The expert may testify as to his
11 opinion on a subject concerning which he has special know-
12 ledge. This is allowed on the theory that the advice of
13 one experienced and versed in technical or special subjects
14 may aid the jury. You may consider the expert's qualifica-
15 tions and opinions; weigh his reasons, if any, and give his
16 testimony such weight as you feel it deserves. As I indi-
17 cated just a moment ago, expert opinion is purely advisory
18 and you may reject it entirely if in your judgment the
19 reasons given for it are not convincing and sound. In other
20 words, the determination rests with you and not with the
21 expert.

22 Now, members of the jury, we come to the last
23 four counts of the indictment, what I said we may call
24 the false return counts. These counts are based on Section
25 7206[1] of the Internal Revenue Code which in pertinent

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part reads:

"Any person who willfully makes and subscribes any return which contains or is verified by a written declaration that it is made under the penalties of perjury and which he does not believe to be true and accurate as to every material matter is guilty of an offense."

I will read the last four counts of the indictment, the statement of the offense being the same for each count, the differences in the counts being the years and the amounts of the gross receipts charged to have been omitted.

Counts 5 thru 8:

"The grand jury further charges, on or about each of the dates hereinafter set forth in the Southern District of New York, Robert L. Wolf, the defendant, unlawfully, willfully and knowingly did make and subscribe United States Individual Income Tax Returns for the calendar years 1966, 1967, 1968 and 1969 respectively, which returns were verified by a written declaration that they were made under the penalties of perjury and were filed with the District Director of the Internal Revenue Service for Manhattan, New York, New York, and which returns he did not believe to be true and correct as to every material matter, namely, the amount of said defendant's gross receipts shown on Schedule C of said returns reported therein, whereas Robert L. Wolf then

1 mcds 100

2 and there well knew the true gross receipts for Schedule C
3 of said return were in excess of the respective reported
4 amounts as follows."

5 Then follows the separate statement as to each
6 count. In the fifth count the indictment charges that in
7 the return for 1966 Dr. Wolf omitted \$24,000. of gross
8 receipts. In the sixth count the indictment charges that
9 in the return for 1967 Dr. Wolf omitted \$22,000. of gross
10 receipts. In the seventh count the indictment charges that
11 in the return for 1968 Dr. Wolf omitted \$42,000. of gross
12 receipts. In the eighth count the indictment charges that
13 in 1969 Dr. Wolf omitted \$42,000. of gross receipts.

14 In order for you to return a verdict against the
15 defendant on any of these four false return counts you must
16 be convinced that as to the count in question each of the
17 following four elements has been proved beyond a reasonable
18 doubt:

19 First, that the defendant made and subscribed to
20 the Federal income tax return for the year mentioned in the
21 count.

22 Second, that the tax return for the year contained
23 a written declaration that it was made under the penalties
24 of perjury.

25 Third, that the return for the year was not

correct as to every material matter.

Fourth, that in signing the tax return the defendant acted willfully in that he knew at the time he signed the return that it was not true and correct as to every material matter.

Now, as to the first two elements to be proved beyond a reasonable doubt, there is no dispute that the defendant signed each of the income tax returns in question and that each contained a written declaration that it was made under the penalties of perjury.

The third element which must be proved beyond a reasonable doubt is that the tax return for the year mentioned in the particular count was not correct as to every material matter. The Government contends that each of the defendant's tax returns was materially incorrect in that it substantially understated the amount of gross receipts which he had derived from his medical practice during the year in question.

If you are convinced beyond a reasonable doubt that a tax return of the defendant did substantially understate his gross receipts for the year, I charge you that as a matter of law you must find that the return was incorrect as to a material matter.

What I said previously concerning the term substantial amount applies equally as well here. What is

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2 a substantial understatement is for you to determine con- 1019
3 sidering all the evidence which you deem relevant.

4 The fourth element which must be proved beyond a
5 reasonable doubt under each of the four false return counts
6 is that in signing the tax return for the year mentioned in
7 the count the defendant acted willfully in that at the time
8 he signed the return he knew that it was not true and
9 correct as to every material matter because it substantially
10 understated his gross receipts.

11 What I said previously about the word willfully
12 applies equally as well here.

13 In dealing with these four false return counts
14 you should have in mind that the relevant Section of the
15 law deals with false statements and not with income tax
16 evasion. Intent to evade taxes is not an element of the
17 offenses charges in counts 5 thru 8.

18 I also instruct you that it is not an element of
19 the offense that the Government rely on the alleged false
20 statements; that is, the Government need not prove that it
21 relied on the alleged false statements.

22 Now, members of the jury, I have emphasized
23 repeatedly that the jury and the jury alone decides all
24 issues of fact which, of course, involves passing on the
25 credibility of witnesses. How do you determine whether

B22

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witnesses are telling the truth? You use your ordinary common sense which you by no means leave behind when you come to this courthouse and when you retire to your jury room. As practical men and women you draw at your experience, your meeting and dealing with people in your everyday business and social life. In passing upon the credibility of the witness you may take into account inconsistencies or contradictions in his or her testimony, conflict with the testimony of another witness, omissions in prior testimony, conflict with prior testimony such as that before the grand jury, or any prior statement of material matters as to which he or she testified upon the trial.

The degree of credit to be given a witness should be determined by the demeanor, the relationship to the controversy and to the parties, the bias or impartiality, the reasonableness of his or her statements, the strength or weakness of his recollection viewed in the light of all other testimony and the attendant circumstances in the case.

You observed the witnesses. You heard their testimony. How did they strike you? Did their answers seem frank, open, truthful, candid? How did each witness impress you? And so you take each one and on the basis of your everyday experience you determine whether or not you believe the witness and to what extent you believe him.

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2 If anyone is found by you to have any interest in ¹⁰²¹
3 this matter, this is a factor which you may take into account
4 in determining the credibility of that witness.

5 Members of the jury, the law permits but does not
6 require a defendant to testify in his own behalf. This
7 defendant has testified, has taken the witness stand here.
8 Obviously a defendant has a deep personal interest in the
9 result of his prosecution. In fact, it seems clear that he
10 has the greatest interest of all. Interest creates a motive
11 for false testimony. The greater the interest, the stronger
12 the motive, and the interest of a defendant in the result
13 of his trial is of a character possessed by no other witness.
14 In appraising his credibility you may take the fact of
15 interest into consideration. However, it by no means follows
16 that simply because a person has a vital interest in the
17 result that he is not capable of giving a straightforward
18 and truthful account of events. It is for you to decide
19 to what extent, if any, his interest has affected or colored
20 his testimony.

21 If you find that the defendant gave false state-
22 ments or caused false statements to be made to Internal
23 Revenue Service agents in an attempt to clear himself, you
24 may consider whether this is circumstantial evidence point-
25 ing to a consciousness of guilt. It may be a reasonable

inference that an innocent person does not ordinarily invent or fabricate to establish his innocence. What significance, if any, to attach to such conduct if you find that there was such conduct in this case is, of course, entirely for the jury.

Now, members of the jury, I come to the end of these instructions, for the length of which I apologize, and in conclusion I must say to you that each of you jurors is entitled to his or her own opinion. You should, however, exchange views amongst yourselves, each with his fellow jurors. That is the very purpose of jury deliberation, to discuss and consider the evidence, to listen to the arguments of fellow jurors, to present your individual views, to consult with one another and to reach an agreement based solely and wholly on the evidence if you can do so without violence to your own individual judgment.

Each one must decide the case for himself or herself after consideration with your fellow jurors of the evidence in the case, but you should not hesitate to change an opinion which after discussion with your fellow jurors appears to be mistaken in the light of the discussion viewed against the evidence and the law. However, if after carefully considering all the evidence and the arguments of your fellow jurors you entertain a conscious view which

differs from the others, you are not to yield your conviction simply because you are outnumbered or outweighed.

Your final vote must reflect your conscientious conviction as to how the issues should be decided. Members of the jury, any verdict must be unanimous. That is, as to each count the verdict must be unanimous.

The jury is not to consider or in any way speculate upon the punishment which the defendant may receive if he is found guilty. Under your oath as jurors you cannot allow a consideration of the punishment which may be imposed upon the defendant if he is convicted to influence your verdict in any way or in any sense to enter into your deliberation. The function of a jury is to determine the guilt or innocence of the defendant on the basis of the evidence and these instructions. It is the Judge alone, the Court, who has the duty of determining the sentence if there is a conviction. The charges here, ladies and gentlemen, are important. The just determination of this case is important to the public. It is equally important to this defendant. Under your oath as jurors you must decide this case without fear or favor and solely, as I have stated any number of times, in accordance with the evidence and the law. If the Government has failed to carry its burden of proof as to any count or counts against this

1 defendant, your sworn duty is to bring in a verdict of not
2 guilty on such count or counts. If the Government has
3 carried its burden as to any count or counts as to this
4 defendant you must not flinch from your sworn duty but you
5 must bring in a verdict of guilty on such count or counts.
6 The guilt or the innocence of the defendant is for you and
7 for you alone to determine.
8

9 The Government to prevail must prove the essential
10 elements, as I explained, by the required degree of proof.
11 If it succeeds your verdict must be guilty. If it fails,
12 your verdict must be not guilty. Each count of the indict-
13 ment should be considered separately. Thus there are
14 various possible verdicts. You may find the defendant not
15 guilty on all counts, guilty on all counts or not guilty
16 on some counts and guilty on other counts. I am not suggest-
17 ing any of these alternatives to you. I am merely trying
18 to point out and to make clear that you should consider
19 each count of the indictment separately as to the defendant.

20 I am giving the foreman a copy of the indictment
21 for your convenient use in considering the several counts.
22 The indictment is not evidence and the defendant has pleaded
23 not guilty to the charges in the indictment.

24 I am also giving to the foreman a form to be used
25 simply as a guide for returning your verdict on each count

as to the defendant. This form is not to be signed. It is only for your convenient use. Your verdict will be returned orally by your foreman in open court and it goes without saying that the form of this memorandum is not intended to nor should it in any way influence your verdict.

If during your deliberations you wish to see any of the exhibits the foreman should send out a note by the marshal and we will send in the requested exhibits to you.

If you should wish any testimony read to you, likewise send a request thru the marshals and your request will be considered and if granted arrangements will be made.

Now, members of the jury, we have reached the point in the trial where we say goodbye to our alternate juror, Miss Funderburg. You have seen how important alternate jurors can be. You have observed justice at work as effectively as if you had become a member of the jury, but you understand, particularly here in this case, it takes this much time and effort, so that unless we have alternate jurors the trial might be halted and a retrial required. As a matter of fact, we had that experience in this case. One of the jurors who was selected became ill and we put in an alternate juror, so, Miss Funderburg, we will excuse you. The Clerk says that if you report to room 109 they will give you a certificate for your jury service. Thank you.

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2 You are excused.

3 [The alternate juror was excused]

4 THE COURT: Now, ladies and gentlemen of the jury,
5 will you please remain in the jury box patiently for a few
6 moments while I see counsel at the side bar to see if there
7 are any last minute questions of law.

8 [At the side bar]

9 MR. LAWYER: I have no requests, your Honor.

10 THE COURT: Mr. Appleman?

11 MR. APPLEMAN: I repeat my request pertaining to
12 my understanding that the leads, whether obtained during
13 the investigation or given by the defendant, should be
14 followed thru.

15 THE COURT: I gave such an instruction.

16 MR. APPLEMAN: You gave the instruction only with
17 regard to leads given by the defendant, not obtained during
18 the investigation. That is the only thing I would have.
19 However, I think it should be placed on the record that the
20 defendant had other counsel and other counsel has given him
21 certain instructions and it would be appreciated if he would
22 give his exceptions.

23 THE COURT: All right.

24 MR. APPLEMAN: I think it should be placed on the
25 record that this independent counsel has been advising

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2 Dr. Wolf throughout this trial.

3 THE COURT: All right. Would you give his name,
4 Mr. Appleman?

5 MR. APPLEMAN: Mr. Jules Ritholz.

6 THE COURT: Give your exceptions, Dr. Wolf.
7 Mr. Appleman said you had exceptions.

8 THE DEFENDANT: I would like to make exception to
9 the following: In one statement your Honor in describing
10 the definition of the word willful, I believe you left out
11 the word "not" which completely altered the context of the
12 statement.

13 THE COURT: Do you remember what the sentence was?

14 THE DEFENDANT: I do not remember offhand. I be-
15 lieve it was when you were dealing with the first four counts.

16 THE COURT: The sentence, as I intended to give
17 it is: The defendant denies that the Government has met
18 its burden of proof and the defendant contends that he has
19 not been shown to have acted willfully.

20 You may be right and just to be on the safe side
21 I will repeat that.

22 THE DEFENDANT: Your Honor, I take exception to
23 the statement that you made very emphatically about the
24 lack of necessity for direct proof of willfulness.

25 THE COURT: I stand by my instruction on that.

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2 THE DEFENDANT: Your Honor, I take exception to
3 the statement that you made to the effect that one manifes-
4 tation of willful intent is cashing checks.

5 THE COURT: Yes, rather than depositing them in
6 a bank account. I left it to the jury to determine what
7 inference to draw from that.

8 THE DEFENDANT: May I suggest that the simple
9 statement as so stated by you implied to me instantly that
10 such an act proves willful intent, which I believe was not
11 your intention.

12 THE COURT: No. It may be inferred from conduct
13 such as obtaining currency from a number of checks for a
14 number of fees rather than depositing checks in a bank
15 account. I will stand by that instruction. Anything else?

16 THE DEFENDANT: I take exception to the statement
17 that you made to the effect that the taxpayer is required
18 to give accurate information above and beyond what his
19 legitimate accountant and representative states is sufficient.

20 THE COURT: No. No, I won't change the instruc-
21 tions as to that.

22 THE DEFENDANT: Your Honor, I take exception to
23 an item designated in 18A of the Government's charges.

24 MR. APPLEMAN: The delegation of responsibility.

25 THE COURT: I will stand by that instruction.

THE DEFENDANT: Your Honor, I take exception to the strong way in which you put the statement that a personal interest in a matter of this nature is indeed the strongest motives for false testimony.

THE COURT: The exact form of that charge is almost traditional in this courthouse, so I use it frequently. I won't change it.

THE DEFENDANT: Is that denied, your Honor?

THE COURT: Yes.

THE DEFENDANT: Your Honor, I take exception to the statement rendered by you to the effect that the defendant gave false statements to the IRS agents.

THE COURT: No, I didn't say that you gave false statements to IRS agents. I said if the jury finds that you gave or caused to be given false statements.

THE DEFENDANT: I never spoke to the IRS agents, your Honor, nor did I --

THE COURT: But suppose you caused to be given to them a false statement.

THE DEFENDANT: There has been no evidence as to that at all.

THE COURT: Then the jury is not supposed to find that you did. I won't change that instruction.

THE DEFENDANT: Your Honor, I take exception to

1 mcds 113

2 one of your last statements where you said if any jury
3 member wants to have a portion of the testimony read that a
4 note should be submitted to the Court and that the reading
5 of the testimony will be merely considered. I think con-
6 sidered is a modification of that and is unnecessary.

7 THE COURT: That is a perfectly standard instruction
8 and I'm sorry but I have to stand by that.

9 THE DEFENDANT: Thank you.

10 THE COURT: All right.

11 [In open court]

12 THE COURT: Mr. Foreman and ladies and gentlemen
13 of the jury, my attention has been called to the possibility
14 that in one part of the instructions I may have inadvertently
15 or otherwise left out a negative and may have changed the
16 intended meaning and I can't determine, of course, what
17 precisely I said but it is just a short matter and rather
18 than take any chance about it I am going to reread it.

19 I was dealing with the element of willfulness and
20 I told the jury that "The Government contends" -- This was
21 specifically with reference to the first four counts, but
22 of course willfully means the same with respect to the last
23 four also: "The Government contends that it has established
24 beyond a reasonable doubt the essential elements as I
25 defined them, including that the defendant acted willfully,"

and then I said or meant to say and I now say, "The defendant denies that the Government has met its burden of proof and the defendant contends that he has not been shown to have acted willfully because, as the defendant contends, there is no evidence of any intentional act or omission by which he intended to evade taxes," and if I said anything other than as I have just read it, the jury will disregard it.

B24

All right, Mr. Clerk, do we have our marshals here? Would you swear the marshals?

[Marshals sworn]

THE COURT: Mr. Foreman, ladies and gentlemen of the jury, I am sorry we have gone so far passed our normal lunchtime. I am going to ask the marshals to take the jury to lunch now in a group and you can commence your deliberations after you return from lunch. Thank you.

[The jury left the courtroom]

THE COURT: Mr. Clerk, will you give counsel a copy of the memorandum given to the foreman of the jury.

All right, I think we can all be excused until 2:30, after which we will wait upon the jury, and I will ask the Clerk to mark a copy of the memorandum given to the jury foreman as the next Court exhibit.

xx

[Court Exhibit 7 was marked]

[Recess, and then the following occurred at 2:45 p.m.]

1 mcds 115

2 THE COURT: I am told we have a note from the jury,
3 so I will open it. It reads and it means they want Govern-
4 ment Exhibits 15 -- It just says Government Exhibit 15,
5 letter; Government Exhibits 11, 12, 13, 14, work sheets and
6 subdivisions.

7 Have you found those?

8 MR. LAWYER: Yes, sir.

9 THE COURT: Then they want Government Exhibits 1,
10 2, 3, and 4, returns, it says.

11 MR. LAWYER: I have those, your Honor.

12 THE COURT: Now, Government Exhibit 15 I have.
13 My information shows there isn't any Exhibit 11.

14 MR. LAWYER: That is a file jacket.

15 THE COURT: Maybe they are smarter than we think.
16 They apparently are. In other words, Government Exhibit 11
17 includes 11A and 11B.

18 MR. LAWYER: 11A and 11B, C and D.

19 THE COURT: Show them to Mr. Appleman and Dr. Wolf,
20 because I would assume when they say "work sheets and sub-
21 divisions" they mean everything in the 11 series.

22 MR. APPLEMAN: I would assume the same thing, your
23 Honor.

24 THE COURT: All right, just check 11 and its sub-
25 divisions.

1 mcds 116

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2 MR. APPLEMAN: Your Honor, did they say they
3 wanted the work sheets and everything related to it?

4 THE COURT: You better take a look at the note.

5 MR. APPLEMAN: And subdivisions. We thought
6 perhaps they were referring to Defendant's Exhibit E, which
7 is the signed statement by Dr. Wolf with regard to the in-
8 come reported in all these years.

9 MR. LAWYER: That is the same as Government
10 Exhibit 15.

11 MR. APPLEMAN: No, Defendant's Exhibit E is that
12 letter which Edelstein made out for Wolf's signature.

13 MR. LAWYER: In any event, they didn't ask for it.

14 MR. APPLEMAN: But that is a related document.

15 THE COURT: But they didn't ask for related
16 documents. They asked for Government Exhibits 11, 12, 13,
17 14, work sheets and subdivisions. I think I would interpret
18 that to be anything in the 11 series, 12, 13 or 14 series.

19 Have you satisfied yourselves, Mr. Appleman and
20 Dr. Wolf, that these folders which are marked Government
21 Exhibits 11A, B, C and D, Government Exhibits 12A and 12B,
22 13 -- It doesn't say Government exhibit on it, but it must
23 be 13A and 13B, and Government Exhibit 14A and 14B are
24 complete and accurate?

25 MR. APPLEMAN: Yes, your Honor, we are so satisfied.

1 mcds 117

2 THE COURT: I don't know whether technically the
3 outer wrapper, the folder, is a part of the exhibit, but
4 is there any reason I shouldn't send it to the jury?

5 MR. APPLEMAN: I didn't notice any writing on it,
6 your Honor.

7 THE COURT: Well, there is some. Would you and
8 Dr. Wolf mind taking a look at it and see whether there is
9 anything in the writing on the outside that doesn't meet
10 with your approval? It appeared to me to be simply a
11 description of the exhibit.

12 MR. APPLEMAN: No, your Honor, no objection. It
13 just appears to be a description on it.

14 THE COURT: Then, Mr. Clerk, I will give you for
15 transmission to the jury thru the marshal Government Exhibits
16 15, 11 and all subdivisions of 11, 12 and all subdivisions
17 of 12 and also Government Exhibits 1, 2, 3 and 4. I will
18 ask the Clerk to mark as the next Court's exhibit the note
19 from the jury.

xx

20 [Court Exhibit 8 was marked]

21 MR. LAWYER: May I request that Mr. Appleman and
22 I put the 3500 material on the record in your absence?

23 THE COURT: Yes, please.

24 MR. LAWYER: 3501, Special Agent Morris Skolnick's
25 final investigative report, dated September 22, 1972.

1 mcds 118

2 3501A, grand jury testimony of Agent Skolnick
3 dated 5/22/73.

4 3502, memo by Skolnick dated 12/1/70 pertaining
5 to telephone conversations with the defendant concerning
6 representation by Mr. Edelstein.

7 3503, Skolnick memo of 10/12/70 concerning inter-
8 view of Edelstein.

9 3504, Skolnick memo of March 11, 1971 concerning
10 interview with Edelstein.

11 3505, Skolnick memo of 8/24/72 concerning tele-
12 phone conversation with Edelstein.

13 3506, Skolnick memo of 8/28/72 concerning tele-
14 phone conversation with Edelstein.

15 3507, Skolnick memo of 8/23/72 concerning tele-
16 phone conversation with Edelstein.

17 3508, grand jury testimony of Edelstein dated
18 4/13/73.

19 3508A, a letter of 8/25/72 by Edelstein concerning
20 a conference and request for delay.

21 3509, grand jury testimony of Ritz Milcznski of
22 4/11/73.

23 3510, testimony of Riza Milcznski before Intel-
24 ligence Division of Internal Revenue Service.

25 3511, memo of April 8, 1971, concerning interview

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2 with Edelstein by Skolnick.

3 3512, memo of 5/12/71 concerning interview of
4 Edelstein by Skolnick.

5 3513, memo of May 13, 1971 concerning interview
6 with Edelstein by Skolnick.

7 3514, memo of 7/21/71 concerning memorandum of
8 telephone conversation with Edelstein by Skolnick.

9 3515, memo of 7/23/71 by Skolnick concerning
10 telephone conversation with Edelstein.

11 3516, Special Agent William P. McGuire's memo of
12 an interview with Edelstein.

B25 13 3516A, work sheet of Special Agent McGuire concern-
14 ing the alleged 1966 loans from Dr. Wolf's mother.

15 There was no 3517, 3518 nor 3519, which means
16 those numbers were simply skipped.

17 3520, Internal Revenue Service schedule of checks
18 drawn on Chemical Bank checking account and thereafter
19 cashed by the defendant in 1966.

20 3521 is the same as 3520 except that it pertains
21 to 1967.

22 3522 is the same as 3520 except that it pertains
23 to 1968.

24 3523 is the same as 3520 except that it pertains
25 to 1969.

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3524, IRS schedule of deposits to the Chemical Bank checking account of the defendant for 1966.

3525 refers to the same thing as does 3524 except that it is for the year 1967.

3526 refers to the same thing as does 3524 except it is for the year 1968.

3527 refers to the same thing as does 3524 except that it is for the year 1969.

3528, IRS schedule of deposits to the Barclays Bank checking account of Dr. Wolf for 1968.

3529 is the same thing as 3528 except that it pertains to 1969.

3530 is the same as 3528 except that it pertains to 1970.

3531 is the same as 3528 except that it refers to the individual date of May 14, 1969.

3532 refers to the same thing as does 3528 except that it refers to the individual date of June 11, 1969.

3533 is the same thing as 3528 except that it refers to the individual date of June 18, 1969.

3534 is the same thing as 3528 except that it refers to the individual date of July 30, 1969.

3535 is the same thing as 3528 except that it refers to the individual date of October 2, 1969.

3536 is the same as 3528 except that it refers to the year 1970.

3537, IRS schedule of the deposit slips to the Chemical Bank savings account of Dr. Wolf for 1966.

3538 is the same as 3537 except that 3538 refers to the years 1967, 1968 and 1969.

[Recess]

THE COURT: We have another note, gentlemen. This says "Government 7, chart summary bank deposits."

Let me just be sure it is in evidence.

Yes, I would say so. Have you seen this original, Mr. Appleman?

MR. APPLEMAN: Yes, your Honor.

THE COURT: All right, then, I will give Government Exhibit 7 to the Clerk to transmit thru the marshal to the jury and I will ask the Clerk to mark the last note from the jury as the next Court exhibit.

[Court Exhibit 5 was marked]

MR. LAWYER: 3539 is the IRS schedule of deposit slips pertaining to the Bankers Trust saving account for the years 1966, 1967 and 1969.

3540 is a deposit slip pertaining to the Bank of New York savings account. The date of that deposit slip is 9/11/69.

3541, IRS analysis sheet pertaining to the brokerage payments to the defendant from White Weld Company for 1968 and 1969.

3542 refers to the IRS analysis of brokerage payments to the defendant from Goodbody & Company for 1969.

3543 refers to the IRS analysis of brokerage payments to defendant from Eastman Dillon for the years 1967, 1968 and 1969.

3544 refers to the IRS analysis of Mt. Sinai salary for 1966.

3545 is the same as 3544 except that 3545 refers to the year 1967.

3546 is the same as 3544 except that 3546 refers to 1968.

3547 is the same as 3544 except that 3547 refers to the year 1969.

3548, IRS analysis of professional income deposited in 1966. It covers the four years 1966 thru 1970, that is, the five years inclusive.

3549 refers to the IRS analysis of professional fees not deposited for the year 1966 and specifically refers to all payments from Mary T. Bradley.

3550 refers to IRS analysis of professional fees not deposited for the year 1967.

3551 is the same as 3550 except that it refers to the year 1968.

3552 is the same as 3550 except that it refers to the year 1969.

3553 is the IRS analysis of payments by defendant to Goodbody & Company for the years 1967 thru 1969.

3554 is the IRS schedule of United Medical Service Blue Shield checks to the defendant for 1966.

3555 is the same as 3554. In short, that particular 3500 material was bulky and make into two numbers.

3556 is the IRS schedule of United Medical Service, Blue Shield and Medicare checks to the defendant for 1967.

3557 is the IRS schedule of United Medical Service, Medicare checks to defendant for 1968.

3558 is the IRS schedule of United Medical Service-Blue Shield checks to defendant for 1969.

3559 is the IRS schedule of United Medical Service-Medicare checks to the defendant for 1969.

3560 is the grand jury testimony of Robert Wolf dated 5/22/73.

3561 is the IRS schedule of transfer of the defendant's funds from Barclays Bank to the Swiss bank during the year 1969.

3602A, New York City Department of Social Services

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2 memo of Medicaid payments to Dr. Wolf. The document is
3 dated 12/8/70. 1041

B27 4 3602B is Richard Weisberg's notes of an interview
5 of Sylvia Fox dated 11/9/72.

6 3603, Richard Weisberg's notes of interview of
7 William Bray of 11/9/73.

8 3604 is a letter from Henrietta Bernstein of the
9 Internal Revenue Service.

10 3605A, the letter from Mary T. Bradley to Agent
11 Skolnick.

12 3605B, the letter from Joseph M. Bradley to
13 Richard Weisberg.

14 3606, letter from M.D. Cooper to Agent Skolnick.

15 3607 is a letter to Mr. Skolnick from G. Harris
16 written on the obverse side of a letter from Skolnick to
17 Harris dated July 28, 1972 referring to Skolnick's.

18 3608A, letter from Mario Fusco to Skolnick.

19 3608B is a contact memorandum by Skolnick pertain-
20 ing to Mario Fusco.

21 3609 is a letter from Louis Gary to Skolnick.

22 3610 is a letter from Kathleen Green to Skolnick.

23 3611 is a letter from Jay Paul Jannuzzo to Skolnick.

24 3612 is a letter from Monique Jay to Skolnick.

25 3613 is a letter from Nedda Marus to Skolnick.

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3614 is a letter from Carrie Mitnick to Skolnick.

3615 is a letter from Antonio Moreau to Skolnick.

3616 is a letter from Catherine Rompf to Skolnick.

3617A is a note from Fanny Rubel to the Internal Revenue Service.

3617B is a contact memorandum written by Skolnick pertaining to Fanny Rubel.

3618 is a letter from Eleanor Schneider to Skolnick.

3619 is a letter from Henry Weinberger to Skolnick.

3620 is a letter from Donald Weinberger to Skolnick.

3621 is a letter from Samuel Weinberger to the Internal Revenue Service.

3622 is a letter from Helene Winston.

MR. APPLEMAN: I received those.

[Recess]

THE COURT: We have a last note from the jury:
"We have reached a verdict."

Mr. Clerk, would you mark that as the next Court exhibit.

[Court Exhibit 10 was marked]

THE COURT: Do you have a copy of the memorandum that you can use for a verdict?

THE CLERK: Yes.

THE COURT: All right, will you get the jury, please.

[Jury present at 3:35 p.m.]

[Roll taken]

THE CLERK: Mr. Foreman, has the jury agreed upon a verdict?

THE FOREMAN: We have.

THE CLERK: How do you find as to count 1?

THE FOREMAN: Guilty.

THE CLERK: As to count 2?

THE FOREMAN: Guilty.

THE CLERK: As to count 3?

THE FOREMAN: Guilty.

THE CLERK: As to count 4?

THE FOREMAN: Guilty.

THE CLERK: As to count 5?

THE FOREMAN: Guilty.

THE CLERK: As to count 6?

THE FOREMAN: Guilty.

THE CLERK: As to count 7?

THE FOREMAN: Guilty.

THE CLERK: As to count 8?

THE FOREMAN: Guilty.

THE COURT: Mr. Clerk, would you please poll the jury.

THE CLERK: Members of the jury you say you find

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the defendant guilty on counts 1, 2, 3, 4, 5, 6, 7 and 8.

[In answer to the question "Is that your verdict?"
all jurors answered in the affirmative.]

THE COURT: Mr. Foreman, members of the jury, I
want to say two things before I discharge you with the
thanks of the Court. In the first place, I never comment
on the verdict of a jury, so you are to draw no conclusions
from the fact that I say nothing about the jury's verdict.

Secondly, probably no one will ever ask you what
transpired in the jury room, but I usually think it fitting
to advise jurors that in my opinion what transpires in the
jury room is strictly a matter among the jurors themselves
and while there is, I should say, free speech in this
country and I never issue orders forbidding jurors to speak
about what transpired in the jury room, I always go far
enough to ask them not to do so and also to say that if
anyone ever asks them what transpired in the jury room to
say so my advice they prefer not to say anything about that.
When I give you these instructions -- They are not instruc-
tions or suggestions, I do not do it because I think anybody
will ever make any such inquiries but simply because I think
it is prudent to do so just as a matter of routine.

Mr. Clerk, the jurors are excused. Do you have
their cards?

1
2 THE CLERK: Yes.

3 THE COURT: But I can't let you go without saying
4 that I have taken note of the fact that thru a longer than
5 average trial you have been punctual. I commend you for
6 that. And you have been attentive and you have been con-
7 scientious and on behalf of the Chief Judge and the other
8 Judges of this court I thank all of you for your service
9 and after you receive your jury service cards you are excused.
10 Thank you very much. You may retire.

11 [Jury excused]

12 THE COURT: Now, Dr. Wolf, before sentence is
13 imposed we like to get a presentence report from the Probation
14 Office and it takes some time to do that. As I have had
15 to tell you before, this is an extraordinarily busy court
16 and the Probation Office, of course, simply reflects the
17 business of the court itself. Therefore, we have to postpone
18 the date of sentence and I am thinking in terms of Friday,
19 the 11th of January.

20 Mr. Lawyer and Mr. Appleman, are they convenient
21 days for you?

22 MR. LAWYER: Fine with me.

23 MR. APPLEMAN: Fine with me, your Honor.

24 THE COURT: All right, suppose we put it down then--
25 I think I'll make it the week following, January 18. That

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2 is a Friday too. That is the week afterwards. That will
3 be Friday, January 18 at 2:30 p.m. and as I am presently
4 advised we will be in room 10. If it should not be in
5 room 10 and we can improve our position, because room 10
6 is even worse than this room, we will put it in the Law
7 Journal and I will try to let you know.

8 What is Dr. Wolf's bail status?

9 MR. APPLEMAN: He is free in his own recognizance
10 and he has been given unlimited rights to travel.

11 THE COURT: What do you say, Mr. Lawyer?

12 MR. LAWYER: We have no objection to the defendant
13 continuing to remain in his own recognizance and we have
14 no objection to his bail limits including the entire
15 continental United States. We would ask that he surrender
16 his passport. If he wants to leave the country we ask that
17 he notify the United States Attorney's office on at least
18 48 hours notice and he not leave unless the United States
19 Attorney's office consents and if there is any problem the
20 Court should be contacted.

B27 21 THE COURT: I think that is reasonable, of course,
22 and I will continue the defendant on his bail status as
23 heretofore except that it will be modified because he now
24 should restrict his movements to the continental United
25 States. He should surrender his passport to the United

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Attorney's office, but if he wants to leave and the United States Attorney's office consents, he may do so without Court order. If the United States Attorney's office does not consent, then he is free to make an application to the Court.

MR. LAWYER: May he also receive bail jumping warnings?

THE COURT: Yes. Dr. Wolf, when you are released on your own recognizance it means that you are released on your promise to appear when required and at the moment it appears that you will be required at 2:30 on January 18 and, of course, you understand that if you don't appear in court when required under this status it is another criminal offense which is much easier to prove than this one.

Now, anything else?

MR. APPLEMAN: Yes, your Honor. The Doctor has asked me to request the right to reserve motions until the time of sentencing.

THE COURT: Of course. I take it, Mr. Lawyer, you don't have any objection.

MR. LAWYER: No, sir.

THE COURT: All right, then, Mr. Clerk, the Court will be in recess.

* * *

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